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CITY OF ASHEVILLE

CITY COUNCIL

MINUTES

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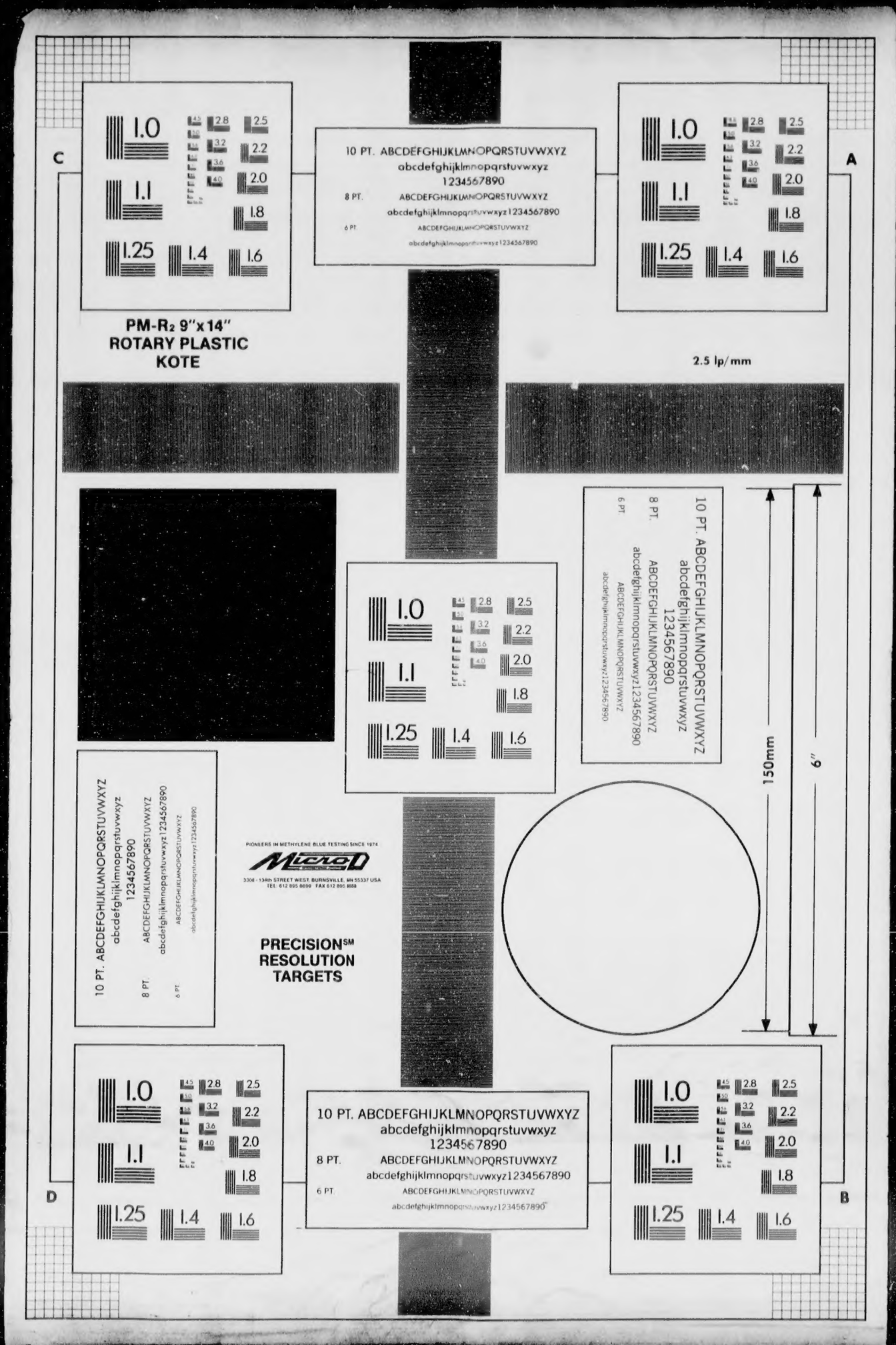
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BUNCOMBE COUNTY

CITY OF ASHEVILLE

CITY COUNCIL

MINUTES

VOLUME: 82

(JULY 24, 2007 -
JANUARY 15, 2008)
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DEPARTMENT OF CULTURAL RESOURCES

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Tuesday – July 24, 2007 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding (arrived in meeting at 8:03 p.m. due to City business in Washington, D.C.); Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Keisha Lipe

Absent: None

PLEDGE OF ALLEGIANCE

Vice-Mayor Jones led City Council in the Pledge of Allegiance.

INVOCATION

Councilwoman Cape gave the invocation.

I. PROCLAMATIONS:

A. RECOGNITION OF JEFF LONG

Vice-Mayor Jones recognized Mr. Jeff Long, Assistant Superintendent of the Municipal Golf Course, as the winner of the Amateur Division of the 48th Michelob Ultra Skyview Pro/Am.

B. RECOGNITION OF CITY EMPLOYEES

City Manager Jackson recognized the following City employees: Assistant City Manager Jeff Richardson as being awarded the North Carolina City/County Management Association Assistant Manager of the Year; Beth Howland, recipient of the Excellence in Public Service Outstanding Supervisor Award; Tony McDowell, recipient of the Excellence in Public Service Outstanding Manager Award; David Foster, recipient of the Robert S. Hobson Award for Leadership in Public Works; Brenda Mills and Bryan Fish, recipients of the City of Asheville Scholarship for Western Carolina MPA Program; and Assistant Fire Chief Scott Burnette, recipient of the Chief Fire Officer designation from the Center for Public Safety Excellence.

II. CONSENT AGENDA:

At the request of Councilman Mumpower, Consent Agenda Items "B", "I" and "J" were removed from the Consent Agenda for individual votes.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JULY 10, 2007

B. RESOLUTION AUTHORIZING THE CITY MANAGER TO SUBMIT AN APPLICATION TO THE N.C. DEPT. OF COMMERCE FOR DESIGNATION OF THREE URBAN PROGRESS ZONES WITHIN THE CITY OF ASHEVILLE

This item was removed from the Consent Agenda for an individual vote.

C. RESOLUTION NO. 07-139 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH DIXON HUGHES, PLLC, CERTIFIED PUBLIC ACCOUNTANTS AND ADVISORS, FOR AUDITING SERVICES FOR FISCAL YEAR 2006-07

E. ORDINANCE NO. 3505- BUDGET AMENDMENT TO AUTHORIZE THE USE OF N.C. STATE DRUG SEIZURE FUNDS TO PURCHASE EQUIPMENT AND FUND IMPROVEMENTS AND TRAINING FOR THE ASHEVILLE POLICE DEPARTMENT

Summary: The consideration of a budget amendment, in the amount of $64,158, to authorize the use of North Carolina State Drug Seizure Funds to purchase equipment and fund improvements and training for the Asheville Police Department (APD).

The North Carolina State drug seizure program is an equitable sharing program which divides the illegal proceeds from drug dealing between the North Carolina State government and local law enforcement agencies. It is designed to help off-set the considerable cost of drug enforcement, by allowing local law enforcement agencies to use seized monies for equipment, training, and improvements that might not necessarily be budgeted for by the agency. The illegal proceeds are divided with 25% going to the North Carolina Department of Revenue and 75% going to the local law enforcement agency initiating the seizure.

During the past fiscal year, the City of Asheville Police Department has received $64,158 in North Carolina State drug seizure funding. This amendment will authorize the use of that funding to purchase drug enforcement equipment, training, and improvements not covered by the APD operating budget.

This action conforms to the City Council's Strategic Operating Plan under Partnerships to Improve Critical Services and Infrastructure. Goal 2, Objective A: Research and develop strategies for securing significant new recurring revenue sources.

Pro:

- North Carolina State drug seizure revenue used to fund drug enforcement equipment, training, and improvements at no cost to city taxpayers.

Con:

- None noted.

City staff recommends City Council approve the budget amendment, in the amount of $64,158, to authorize the use of North Carolina State Drug Seizure Funds to fund drug enforcement equipment, training, and improvements for the Asheville Police Department.

ORDINANCE BOOK NO. 24 - PAGE 82

F. ORDINANCE NO. 3506- BUDGET AMENDMENT TO AUTHORIZE THE USE OF FEDERAL DRUG SEIZURE FUNDS TO PURCHASE EQUIPMENT AND FUND IMPROVEMENTS AND TRAINING FOR THE ASHEVILLE POLICE DEPARTMENT

Summary: The consideration of a budget amendment, in the amount of $248,725, to authorize the use of Federal Drug Seizure Funds to purchase equipment and fund improvements and training for the Asheville Police Department (APD).

The federal drug seizure program is an equitable sharing program which divides the illegal proceeds from drug dealing between the federal government and local law enforcement agencies. It is designed to help off-set the considerable cost of drug enforcement, by allowing local law enforcement agencies to use seized monies for equipment, training, and improvements that might not necessarily be budgeted for by the agency. The illegal proceeds are divided with 20% going to the federal agency adopting the seizure and 80% going to the local law enforcement agency initiating the seizure. During the past fiscal year, the City of Asheville Police Department has received $248,725 in federal drug seizure funding. This proposed budget

Summary: The consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Rockin The River Festival & Raft Races (a fundraiser for RiverLink, Inc.) on August 11, 2007

The RiverLink, Inc. group has requested through the Asheville Parks and Recreation Department that City Council permit them to serve beer and/or unfortified wine at their event and allow for consumption at this event. The Rockin' The River Raft Race Festival will be held on Saturday, August 11, 2007, from 10:00 a.m. – 7:00 p.m. at French Broad River Park.

Pros:

- Allows fundraising opportunities for charity
- Generates economic impact for the community
- Provides additional quality cultural programming and diversity

Con:

- Potential for public safety issues

The Asheville Parks and Recreation Department recommends City Council approve a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Rockin The River Festival & Raft Races on August 11, 2007.

RESOLUTION BOOK NO. 30 - PAGE 316

I. **RESOLUTION AUTHORIZING THE CITY MANAGER TO AMEND THE CONTRACT WITH KIMLEY-HORN TO PREPARE A DOWNTOWN PARKING STUDY**

This item was removed from the Consent Agenda for an individual vote.

J. **RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH CORT ARCHITECTURAL GROUP, P.A., TO PROVIDE A FEASIBILITY ANALYSIS FOR A "GREEN" ROOF REPLACEMENT FOR THE CIVIC CENTER, TO DEVELOP CONSTRUCTION PLANS AND DOCUMENTS, AND TO PROVIDE CONSTRUCTION ADMINISTRATION SERVICES**

This item was removed from the Consent Agenda for an individual vote.

RESOLUTION BOOK NO. 30 - PAGE 319

Vice-Mayor Jones said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Freeborn moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Davis and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

B. **RESOLUTION NO. 07-138- RESOLUTION AUTHORIZING THE CITY MANAGER TO SUBMIT AN APPLICATION TO THE N.C. DEPT. OF COMMERCE FOR DESIGNATION OF THREE URBAN PROGRESS ZONES WITHIN THE CITY OF ASHEVILLE**

Summary: The consideration of a resolution authorizing the City Manager to submit an application to the North Carolina Department of Commerce for designation of three Urban Progress Zones within the City of Asheville.

CORRECTION

Tuesday – July 24, 2007 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding (arrived in meeting at 8:03 p.m. due to City business in Washington, D.C.); Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Keisha Lipe

Absent: None

PLEDGE OF ALLEGIANCE

Vice-Mayor Jones led City Council in the Pledge of Allegiance.

INVOCATION

Councilwoman Cape gave the invocation.

I. PROCLAMATIONS:

A. RECOGNITION OF JEFF LONG

Vice-Mayor Jones recognized Mr. Jeff Long, Assistant Superintendent of the Municipal Golf Course, as the winner of the Amateur Division of the 48th Michelob Ultra Skyview Pro/Am.

B. RECOGNITION OF CITY EMPLOYEES

City Manager Jackson recognized the following City employees: Assistant City Manager Jeff Richardson as being awarded the North Carolina City/County Management Association Assistant Manager of the Year; Beth Howland, recipient of the Excellence in Public Service Outstanding Supervisor Award; Tony McDowell, recipient of the Excellence in Public Service Outstanding Manager Award; David Foster; recipient of the Robert S. Hobson Award for Leadership in Public Works; Brenda Mills and Bryan Fish, recipients of the City of Asheville Scholarship for Western Carolina MPA Program; and Assistant Fire Chief Scott Burnette, recipient of the Chief Fire Officer designation from the Center for Public Safety Excellence.

II. CONSENT AGENDA:

At the request of Councilman Mumpower, Consent Agenda Items "B", "I" and "J" were removed from the Consent Agenda for individual votes.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JULY 10, 2007

B. RESOLUTION AUTHORIZING THE CITY MANAGER TO SUBMIT AN APPLICATION TO THE N.C. DEPT. OF COMMERCE FOR DESIGNATION OF THREE URBAN PROGRESS ZONES WITHIN THE CITY OF ASHEVILLE

This item was removed from the Consent Agenda for an individual vote.

C. RESOLUTION NO. 07-139 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH DIXON HUGHES, PLLC, CERTIFIED PUBLIC ACCOUNTANTS AND ADVISORS, FOR AUDITING SERVICES FOR FISCAL YEAR 2006-07

Summary: The consideration of a resolution authorizing the Mayor to execute a contract with Dixon Hughes, PLLC, Certified Public Accountants and Advisors, for auditing services for Fiscal Year 2006-07.

NC General Statute sec. 159-34 requires that local governments of North Carolina have their accounts audited each fiscal year and submit a copy of the audit to the Local Government Commission.

Based on our review of a proposal submitted by Dixon Hughes, staff recommends retaining their services for Fiscal Year 2006-07. We have previously worked with Dixon Hughes and they have consistently provided a thorough and high quality audit for the City.

The base fee has been proposed at $81,400. Funds are appropriated in the budget of the Accounting Division of the Finance Department.

Pro: Allows us to meet NC General Statute sec. 159-34.

Con: No cons noted.

City staff recommends Council approve a resolution authorizing the Mayor to execute a contract with Dixon Hughes, PLLC, Certified Public Accountants and Advisors, for auditing services for Fiscal Year 2006-07.

RESOLUTION BOOK NO. 30 - PAGE 334

D. ORDINANCE NO. 3504 - ORDINANCE AMENDING CHAPTER 21 OF THE CITY OF ASHEVILLE CODE OF ORDINANCES ENTITLED "WATER DISTRIBUTION SYSTEM"

Summary: The consideration of an ordinance amending the Chapter 21 of the City of Asheville Code of Ordinances entitled "Water Distribution System."

Ordinance Number 2448, Water Distribution System, approved by City Council on February 10, 1998, enabled the City of Asheville Engineering Department to approve and permit locally water system improvements and line extensions for the Regional Water Authority of Asheville, Buncombe, and Henderson.

This ordinance needs to be changed to remove references of the Regional Water Authority as the water provider for the City of Asheville water system and to transfer water plan review and permitting from the City Engineering Department to the Water Resources Department which took over this function effective July 1, 2007.

Pro:

- This is an administrative change to reflect the deletion of the Regional Water Authority as the water provider for the City of Asheville water system and to reflect the permitting department changes from Engineering to Water Resources.

Con:

- There are no cons to these requested changes.

Staff recommends that City Council approve an ordinance amending the City of Asheville Code of Ordinances Chapter 21 entitled "Water Distribution System."

ORDINANCE BOOK NO. 24 - PAGE 73

E. ORDINANCE NO. 3505- BUDGET AMENDMENT TO AUTHORIZE THE USE OF N.C. STATE DRUG SEIZURE FUNDS TO PURCHASE EQUIPMENT AND FUND IMPROVEMENTS AND TRAINING FOR THE ASHEVILLE POLICE DEPARTMENT

Summary: The consideration of a budget amendment, in the amount of $64,158, to authorize the use of North Carolina State Drug Seizure Funds to purchase equipment and fund improvements and training for the Asheville Police Department (APD).

The North Carolina State drug seizure program is an equitable sharing program which divides the illegal proceeds from drug dealing between the North Carolina State government and local law enforcement agencies. It is designed to help off-set the considerable cost of drug enforcement, by allowing local law enforcement agencies to use seized monies for equipment, training, and improvements that might not necessarily be budgeted for by the agency. The illegal proceeds are divided with 25% going to the North Carolina Department of Revenue and 75% going to the local law enforcement agency initiating the seizure.

During the past fiscal year, the City of Asheville Police Department has received $64,158 in North Carolina State drug seizure funding. This amendment will authorize the use of that funding to purchase drug enforcement equipment, training, and improvements not covered by the APD operating budget.

This action conforms to the City Council's Strategic Operating Plan under Partnerships to Improve Critical Services and Infrastructure. Goal 2, Objective A: Research and develop strategies for securing significant new recurring revenue sources.

Pro:

- North Carolina State drug seizure revenue used to fund drug enforcement equipment, training, and improvements at no cost to city taxpayers.

Con:

- None noted.

City staff recommends City Council approve the budget amendment, in the amount of $64,158, to authorize the use of North Carolina State Drug Seizure Funds to fund drug enforcement equipment, training, and improvements for the Asheville Police Department.

ORDINANCE BOOK NO. 24 - PAGE 82

F. ORDINANCE NO. 3506- BUDGET AMENDMENT TO AUTHORIZE THE USE OF FEDERAL DRUG SEIZURE FUNDS TO PURCHASE EQUIPMENT AND FUND IMPROVEMENTS AND TRAINING FOR THE ASHEVILLE POLICE DEPARTMENT

Summary: The consideration of a budget amendment, in the amount of $248,725, to authorize the use of Federal Drug Seizure Funds to purchase equipment and fund improvements and training for the Asheville Police Department (APD)

The federal drug seizure program is an equitable sharing program which divides the illegal proceeds from drug dealing between the federal government and local law enforcement agencies. It is designed to help off-set the considerable cost of drug enforcement, by allowing local law enforcement agencies to use seized monies for equipment, training, and improvements that might not necessarily be budgeted for by the agency. The illegal proceeds are divided with 20% going to the federal agency adopting the seizure and 80% going to the local law enforcement agency initiating the seizure. During the past fiscal year, the City of Asheville Police Department has received $248,725 in federal drug seizure funding. This proposed budget

amendment would authorize the use of this funding for critical improvements, training, and equipment purchases for the Asheville Police Department.

Among the items slated for purchase with this funding include: 1) NarTest drug analysis system to test illegal drugs and provide a conclusive analysis for court purposes; 2) Open Text document imaging system to provide for electronic submission of felony papering to the District Attorney's Office; 3) In-Car video camera systems for applicable police vehicles, allowing for better documentation and evidence of offenses; 4) Automatic License Plate Recognition system(s) for criminal interdiction; 5) Training and travel for law enforcement training related to drug and gang enforcement; 6) Other uniforms and equipment not covered by the APD operating budget.

This action conforms to the City Council's Strategic Operating Plan under Partnerships to Improve Critical Services and Infrastructure. Goal 2, Objective A: Research and develop strategies for securing significant new recurring revenue sources.

Pro:

- Federal seizure revenue to cover the cost of equipment and training related to street level drug enforcement and community policing

Con: None noted.

City staff recommends City Council approve the budget amendment, in the amount of $248,725, to authorize the use of Federal Drug Seizure Funds to purchase equipment and training for the Asheville Police Department.

ORDINANCE BOOK NO. 24 - PAGE 84

G. RESOLUTION NO. 07-140 - RESOLUTION OF INTENT TO CLOSE STEVENS STREET AND SETTING A PUBLIC HEARING FOR AUGUST 21, 2007

Summary: The consideration of a resolution of intent to close Stevens Street and request a public hearing would be set for August 21, 2007, regarding this issue.

N. C. Gen. Stat. sec. 160-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, Patsy Brison, on behalf of B. Fletcher Carter, has requested the City of Asheville permanently close Stevens Street. This street formerly intersected with Fairview Road and was removed during the construction of the new Bleachery Boulevard. Public Works Department staff has researched and determined that Stevens Street still remains on the City maintained streets listing.

Provided Council sets a public hearing, City staff will research and determine the pros and cons of the request. This will include determination of whether the closure affects abutting property owners, transportation plans, greenway plans, utilities, etc.

City staff recommends that City Council adopt the resolution setting a public hearing for August 21, 2007, to close Stevens Street.

RESOLUTION BOOK NO. 30 - PAGE 385

H. RESOLUTION NO. 07-141 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND UNFORTIFIED WINE AT THE ROCKIN THE RIVER FESTIVAL AND RAFT RACES ON AUGUST 11, 2007

Summary: The consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Rockin The River Festival & Raft Races (a fundraiser for RiverLink, Inc.) on August 11, 2007.

The RiverLink, Inc. group has requested through the Asheville Parks and Recreation Department that City Council permit them to serve beer and/or unfortified wine at their event and allow for consumption at this event. The Rockin' The River Raft Race Festival will be held on Saturday, August 11, 2007, from 10:00 a.m. – 7:00 p.m. at French Broad River Park.

Pros:

- Allows fundraising opportunities for charity
- Generates economic impact for the community
- Provides additional quality cultural programming and diversity

Con:

- Potential for public safety issues

The Asheville Parks and Recreation Department recommends City Council approve a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Rockin The River Festival & Raft Races on August 11, 2007.

RESOLUTION BOOK NO. 30 - PAGE 386

I. RESOLUTION AUTHORIZING THE CITY MANAGER TO AMEND THE CONTRACT WITH KIMLEY-HORN TO PREPARE A DOWNTOWN PARKING STUDY

This item was removed from the Consent Agenda for an individual vote.

J. RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH CORT ARCHITECTURAL GROUP, P.A., TO PROVIDE A FEASIBILITY ANALYSIS FOR A "GREEN" ROOF REPLACEMENT FOR THE CIVIC CENTER, TO DEVELOP CONSTRUCTION PLANS AND DOCUMENTS, AND TO PROVIDE CONSTRUCTION ADMINISTRATION SERVICES

This item was removed from the Consent Agenda for an individual vote.

RESOLUTION BOOK NO. 30 - PAGE 389

Vice-Mayor Jones said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Freeborn moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Davis and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

B. RESOLUTION NO. 07-138- RESOLUTION AUTHORIZING THE CITY MANAGER TO SUBMIT AN APPLICATION TO THE N.C. DEPT. OF COMMERCE FOR DESIGNATION OF THREE URBAN PROGRESS ZONES WITHIN THE CITY OF ASHEVILLE

Summary: The consideration of a resolution authorizing the City Manager to submit an application to the North Carolina Department of Commerce for designation of three Urban Progress Zones within the City of Asheville.

In July of 2006 the NC General Assembly passed legislation (House Bill 2170) that created a new business tax credit program, replacing the William S. Lee credits, which will be repealed for business activities that occur on or after January 1, 2007.

Under the new program, businesses that add new jobs or invest in business property, and operate under specific NAICS codes, are eligible for state tax credits. To be eligible, the business must also:

- pay an average weekly wage for all full-time employees equal to or greater than 110% of the state average weekly wage,
- provide health insurance for full-time employees and pay 50% of premiums,
- have no significant environmental violations in the last five years,
- have no outstanding citations under OSHA and no serious violations within the last three years, and
- have no overdue taxes.

Municipalities have the authority to apply for Urban Progress Zones within their boundaries, subject to strict state-defined criteria, wherein these eligible businesses are provided enhanced state tax credits when adding jobs or investing in business property.

Urban Progress Zones are comprised of contiguous census tracts and/or block groups. Census tracts and block groups must meet strict criteria to be eligible for inclusion in an Urban Progress Zone. Once an Urban Progress Zone is assembled from its eligible parts, it too must meet strict criteria to be eligible as a whole. In general, the requirements indicate that the State is looking for zones with high levels of poverty, and a balance between residential and commercial land uses.

There is no limit on the number of Urban Progress Zones that a municipality may apply for, but the total cumulative area of all zones may not exceed 15% of the municipality's area. The extraterritorial jurisdiction area is not eligible. The total land area of the City of Asheville equals 43.77 square miles. Therefore, a maximum of 6.57 square miles may be designated as part of an Urban Progress Zone. (Note: This area is significantly smaller than the land area that was previously eligible for William S. Lee tax credits)

Staff research identified three areas that are eligible for designation as Urban Progress Zones. Total cumulative area of the three zones equals 6.40 square miles. Some brief statistics are provided below:

	Zone 1	Zone 2	Zone 3
Total Population	9,119	3,788	1,191
Total Population Below Poverty Level	27.90%	16.97%	21.49%
Total Area (sq. miles)	3.85	2.02	0.53
Total Land Area Zoned as Non Residential*	33.82%	32.62%	29.95%

* *must not exceed 35%*

Pros:

- This action will allow us to provide incentives for business growth and investment within distressed Asheville communities.
- Urban Progress Zones do not require city investment beyond identification of eligible zones and application. Credits are applied only to state taxes.
- Eligible businesses are allowed to file for the tax credits as part of their NC corporate income tax, NC corporate franchise tax, or -in the case of insurance companies- the state premiums tax. No separate application process to redeem the credits is required.

- The Asheville-Buncombe Economic Development Committee has endorsed Urban Progress Zones.

Con:

- Must reapply each year.

City staff recommends City Council approve a resolution authorizing the City Manager to submit an application to the North Carolina Department of Commerce for designation of three Urban Progress Zones within the City of Asheville.

Councilman Mumpower was not comfortable with the concept and felt it creates another layer of bureaucracy.

Councilman Davis noted that eligible businesses in the zones are given a small tax credit which provides for employment and better development in those areas.

Councilwoman Cape moved for the adoption of Resolution No. 07-138. This motion was seconded by Councilman Newman and carried on a 5-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 30 - PAGE 383

I. **RESOLUTION NO. 07-142 - RESOLUTION AUTHORIZING THE CITY MANAGER TO AMEND THE CONTRACT WITH KIMLEY-HORN TO PREPARE A DOWNTOWN PARKING STUDY**

Summary: The consideration of a resolution authorizing the City Manager to amend the contract with Kimley-Horn, in an amount not to exceed $97,500, to prepare a downtown parking study.

On June, 12, 2007, City Council authorized the City Manager to execute an agreement with Kimley-Horn for the feasibility study of a parking garage on Rankin Avenue. Since that time, Council has requested that staff expand the scope of work to include a downtown parking study for all of the Central Business District. The additional cost to perform this work is $97,500.

The money for this project will come from the parking enterprise fund.

Pros:

- This action will allow us to update the parking study that was completed in 1998.
- Money for this project in available in the Parking Enterprise Fund.
- The parking study of the Central Business District will allow us to plan for parking in the future.

Con:

- While this is a necessary, it represents a significant investment.

Staff recommends City Council approve a resolution authorizing the City Manager to amend the contract with Kimley-Horn in an amount not to exceed $97,500 to prepare a downtown parking study.

Councilman Mumpower felt that we have invested millions of dollars into creating a parking plan that we stepped away from and he did not want to invest additional new dollars.

Councilman Davis moved for the adoption of Resolution No. 07-142. This motion was seconded by Councilman Newman and carried on a 5-1 vote, with Councilman Mumpower voting "no."

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J. **RESOLUTION NO. 07-143- RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH CORT ARCHITECTURAL GROUP, P.A., TO PROVIDE A FEASIBILITY ANALYSIS FOR A "GREEN" ROOF REPLACEMENT FOR THE CIVIC CENTER**

Summary: The consideration of a resolution authorizing the City Manager to execute a contract with Cort Architectural Group, PA, in the amount not to exceed $302,290, to provide a feasibility analysis for a "green" roof replacement for the Civic Center, develop the construction plans and documents, and provide construction administration services.

The City of Asheville requested proposals from architects to provide a feasibility analysis for a "green" roof replacement for the Civic Center, develop the construction documents, and provide construction administration services in February 2007. Staff received two proposals from architects to provide this work.

Staff interviewed the two firms to determine the most qualified. The interview panel consisted of three staff members and one citizen. This group determined that Cort Architectural Group, PA, was qualified to perform the majority of the work with the exception of the feasibility analysis of a "green" roof option. Staff requested that Cort Architectural Group propose a sub-consultant that had experience working on "green" roofs. Cort has proposed to use Mr. Madonia with Roof Engineering, Inc. Mr. Madonia worked for the City of Charlotte in the Discovery Place Roof project.

The estimated cost for the work is broken down by stages as follows:

Stage I:	Structural Analysis	$18,000
Stage II:	Feasibility Study for Environmental Roof	$18,090
	A: Landscaped Roof	$14,590
	B: Environmental Sensitive Roof	$ 3,500
Stage III:	Design and Construction (Maximum Costs)	$266,200
	Option 1: Landscaped Roof	$266,200
	Option 2: Environmentally Sensitive Roof	$132,099
Maximum Total Costs:		$302,290

If the structural analysis indicates that a landscaped roof will not be an option, the cost of this contract could be as low as $153,599.

The design and construction cost is estimated at ten percent of construction costs plus additional costs.

Prior to moving forward with the design and construction, staff will report back to City Council on the findings of the feasibility analysis.

Staff has briefed the Civic Center Commission at its May, June and July meetings. They were supportive of the direction we were proceeding.

Pros:

- This action will allow us to move forward on replacing the Civic Center Arena and Concourse Roof.
- The feasibility study will determine our ability to replace the roof with a landscaped roof alternative.
- Money for this project in available in the current budget.

Con:

- While this is a necessary step in the process, it represents a significant investment.

Staff recommends City Council approve a resolution authorizing the City Manager to execute a contract with Cort Architectural Group, PA, in the amount not to exceed $302,290, to provide a feasibility analysis for a "green" roof replacement for the Civic Center, develop the construction documents, and provide construction administration services.

Councilman Mumpower expressed the following concerns: (1) if we are about to relinquish this facility, he would have a hard time investing that kind of money; (2) because we didn't receive any bids earlier he felt this was a marginal proposition in terms of real potential; and (3) $302,290 just to support the feasibility is an extraordinary investment of dollars in something that is nice, but not necessary.

Rev. Christopher Chiaronmonte urged Council to stop spending money on studies and just design it.

Mr. Dennis Justice questioned if Buncombe County was agreeable to a green roof since the City is talking about transferring the facility to them. The City should do the repairs that must be done to fix the roof but suggested City Council postpone action on this for two months. He also felt that the financing should come when the final solution about the Civic Center is determined, whether through a room tax or a food/beverage tax.

Mr. David Hughes felt the money for a green roof could more wisely be spent on houses for low income people or teachers' salaries.

Director of Transportation and Engineering Cathy Ball said that the first phase of this is the structural analysis for $18,000 and the feasibility study of approximately $18,000. The rest is the design and administration and the cost of the roof will vary depending on the kind of roof becomes feasible.

Councilman Newman said that research shows that the lifetime of a green roof is about double the lifetime of other conventional roofing materials and there are also great benefits from a stormwater management standpoint.

In response to Councilwoman Cape, Ms. Ball said that out of the $302,290, approximately $150,000 is what we would need to repair the roof in general (without a green roof).

Councilwoman Cape suggested we move forward with the structural analysis alone, since that is needed regardless of which roof is decided upon. After the analysis is done, she recommended City staff report back to Council at which time Council can make the decision on the type of roof, since the roof may not be able to bear the weight of a landscaped roof.

Councilman Davis regretted that the Civic Center is a negotiating chip, along with other city properties, in the water agreement negotiations. He personally was not in favor of that. He

felt we do need to move forward, but agreed with Councilwoman Cape that we needed to do it in increments.

Councilman Mumpower said that in view of the continued negotiations with Buncombe County, could we postpone action for 30 days rather than commit dollars to something the City may or may not own.

Councilwoman Cape felt it would be a good faith relationship with the County to keep working towards taking care of our buildings. The roof needs to be repaired for the whole community.

Councilman Newman moved to approve $18,000 for the structural analysis for the Civic Center roof repairs. This motion was seconded by Councilwoman Cape.

Councilman Mumpower does not want to give the Buncombe County City taxpayer dollars on this and he won't support giving up the Civic Center under any circumstances.

Councilman Davis said that there is also uncertainty in what the County will do with the Civic Center should they take the Civic Center over. He thinks this is the first time that he has ever voted against repairs to the Civic Center, but he would do that tonight.

Councilman Newman said that there are conversations taking place between the City and the County around trying to resolve the water dispute. The old Water Agreement included a range of recreational facilities and there is a range of conversations around potential ways to find a meeting of the minds. Just as he voted to invest funds to repair the water system as we try to seek this negotiated settlement, or if we resolve the issue through the judicial process, we can't afford to let our facilities be ignored while conversations are taking place. We have worked to improve the Civic Center with the financial resources that we have and until other decisions are made, it is a City of Asheville facility and we need to take care of it.

The motion made by Councilman Newman and seconded by Councilwoman Cape carried on a 4-2 vote, with Councilman Davis and Councilman Mumpower voting "no."

City Attorney Oast said that because of the vote, this matter would have to come back for a second reading.

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III. PRESENTATIONS & REPORTS:

A. BOARD OF ELECTRICAL EXAMINERS ANNUAL REPORT

Mr. Harold Garland, Chair of the Board of Electrical Examiners, said the purpose of the Board is to examine the applications for journeyman electrical licenses for the City of Asheville.

Building Safety Director Robert Griffin said that the ordinance states that the licensed electrician may employ a journeyman to work under their oversight and to perform work meeting the NC State Electrical Code. The journeyman may have one helper who is not required to have the journeyman license.

The 2006-07 highlights include: (1) journeyman exam given six times; (2) 70 applicants (a) 46 passing grades - 75 or higher; and (b) 24 did not pass; (3) highest grade was 97; and (4) Asheville-Buncombe Technical College and the City of Asheville joined forces and gave a Spanish language journeyman exam on January 9, 2007. This was a first in the State of North Carolina.

The 2007-08 objectives include: (1) issue photo id's to all journeymen; (2) continue with Spanish exams, when appropriate; (3) hold special exam dates when necessary; (4) maintain high standards; (5) consider making recommended changes in ordinance to improve quality; and (6) continue reciprocity with seven other North Carolina cities.

On behalf of City Council, Vice-Mayor Jones thanked Mr. Garland and the Board for this hard work on this Board.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE ANNEXATION OF THE BILTMORE LAKE AREA

Vice-Mayor Jones opened the public hearing at 5:53 p.m.

Urban Planner Julia Cogburn said that this is the public hearing to consider the annexation of the Biltmore Lake area. This public hearing was advertised on June 18 and 25, 2007.

On May 15, 2007, City Council adopted Resolutions of Intent beginning the annexation process for the following three areas: Biltmore Lake; Sardis Road; Schenck Gateway. The Annexation Services Plan for these areas was approved on May 22, 2007, and a public information meeting was held on July 2, 2007. Approximately 65 persons affected by the proposed annexations attended this meeting. Remaining steps include:

Adoption of annexation ordinances - August 14, 2007
Effective date of annexations - December 31, 2007

Ms. Cogburn made a brief presentation concerning the Services Plan for the Biltmore Lake area.

The following individuals spoke against the annexation of the Biltmore Lake area for various reasons, some being, but are not limited to: line drawn for annexation only includes a partial annexation of the neighborhood which may cause confusion of service delivery along with discord of the neighborhood, particularly over homeowner association dues; arbitrary line drawn for annexation goes between two houses; homeowners have already paid for the infrastructure with no reimbursement; if annexation must occur, it should occur when the entire community is built out; the City offers no new services that are not already provided for through the homeowner association fees; Biltmore Lake residents will pay $1,178,000 per year and receive services valued only at $253,000 per year; a referendum should be presented to all citizens who are confronted with annexation; taxation without representation; residents have retained an attorney and the City should not accept the N.C. League of Municipalities assistance but have taxpayers pay for their representation; and the City already cannot handle the problems they currently have:

Mr. Dieter Beutler, resident of Biltmore Lake
Mr. Nelson Sartoris, resident of Biltmore Lake
Mr. Tom Keleher, resident of Biltmore Lake
Mr. Jerry Jensen, resident of Biltmore Lake
Ms. Louise Glickman, resident of Biltmore Lake
Rev. Christopher Chiaronmonte
Ms. Teri Shaull, resident of Biltmore Lake
Ms. Carol Keleher, resident of Biltmore Lake
Mr. Lee Loy, resident of Biltmore Lake
Ms. Diann Jensen, resident of Biltmore Lake

Ms. Lindsey Simerly spoke in support of annexation in that Biltmore Lake residents who live on the fringe of the City do receive benefits from the City of Asheville.

City Attorney Oast said that the N.C. League of Municipalities has not offered any assistance and that he, as City Attorney, handles the City's litigation, sometimes with outside legal counsel which the City of Asheville pays for.

Ms. Cogburn explained how the lines are drawn. She said that a great deal of time is devoted to studying the area by not only the Planning Department but other City departments as well. The lines drawn are not arbitrary. They are drawn to make as much sense as possible on a number of issues regarding service delivery and even though it is an inexact science, they do take it very seriously and they do look very carefully at following the state statutes and providing good service to areas that are annexed.

Urban Planner Blake Esselstyn reiterated Ms. Cogburn's comments about how the lines are drawn. He said that the State statutes state that annexation boundaries have to follow property lines. He acknowledges there were times when a house was being built, but that property had not been divided off and we can't arbitrarily draw a line around where we think that house lot will be, because we must follow property lines. Biltmore Lake is in a constant state of flux and no matter where the lines are drawn, there would be future development on the other side of that line.

Ms. Cogburn explained the procedure used at the public information meeting.

Vice-Mayor Jones said that the public is welcome to submit any other questions in writing assuring them that their questions will be responded to.

Vice-Mayor Jones closed the public hearing at 6:44 p.m.

Vice-Mayor Jones said that consideration of the ordinance to annex the Biltmore Lake area will be held on August 14, 2007.

B. PUBLIC HEARING TO CONSIDER THE ANNEXATION OF THE SARDIS ROAD AREA

Vice-Mayor Jones opened the public hearing at 6:44 p.m.

Urban Planner Julia Cogburn said that this is the public hearing to consider the annexation of the Sardis Road area. This public hearing was advertised on June 18 and 25, 2007.

On May 15, 2007, City Council adopted Resolutions of Intent beginning the annexation process for the following three areas: Biltmore Lake; Sardis Road; Schenck Gateway. The Annexation Services Plan for these areas was approved on May 22, 2007, and a public information meeting was held on July 2, 2007. Approximately 65 persons affected by the proposed annexations attended this meeting. Remaining steps include:

Adoption of annexation ordinances - August 14, 2007
Effective date of annexations - December 31, 2007

Ms. Cogburn made a brief presentation concerning the Services Plan for the Sardis Road area.

Mr. Jack Dainty, resident on Slosman Drive, felt Council should annex all the contiguous areas that are next to the City so that everyone will be impacted in the same way. He felt that forced annexation does not meet reasonable common sense and is morally wrong. He urged

Council to instruct the N.C. Dept. of Transportation (NC DOT) to install a traffic light at the intersection of Oakview and Sand Hill Road. He also noted that his questions were not responded to from the public information meeting.

A representative of an owner of property in Crowell Farms also noted that a traffic light is needed at the intersection of Oakview and Sand Hill Road.

At the request of Councilman Davis who said that this request has been forwarded to the NC DOT about two years ago, Councilman Freeborn, member of the Metropolitan Planning Organization, said that he would follow-up on this request.

Vice-Mayor Jones closed the public hearing at 6:53 p.m.

Vice-Mayor Jones said that consideration of the ordinance to annex the Sardis Road area will be held on August 14, 2007.

C. PUBLIC HEARING TO CONSIDER THE ANNEXATION OF THE SCHENCK GATEWAY AREA

Vice-Mayor Jones opened the public hearing at 6:53 p.m.

Urban Planner Julia Cogburn said that this is the public hearing to consider the annexation of the Schenck Gateway area. This public hearing was advertised on June 18 and 25, 2007.

On May 15, 2007, City Council adopted Resolutions of Intent beginning the annexation process for the following three areas: Biltmore Lake; Sardis Road; Schenck Gateway. The Annexation Services Plan for these areas was approved on May 22, 2007, and a public information meeting was held on July 2, 2007. Approximately 65 persons affected by the proposed annexations attended this meeting. Remaining steps include:

Adoption of annexation ordinances - August 14, 2007
Effective date of annexations - December 31, 2007

Staff made a brief presentation concerning the Services Plan for the Schenck Gateway area.

Vice-Mayor Jones closed the public hearing at 6:54 p.m.

Vice-Mayor Jones said that consideration of the ordinance to annex the Schenck Gateway area will be held on August 14, 2007.

D. PUBLIC HEARING TO CONSIDER A REQUEST TO REVIEW A PROPOSED MASTER SIGN PACKAGE FOR PHASE II OF BILTMORE PARK TOWN SQUARE

ORDINANCE NO. 3507 - ORDINANCE APPROVING A MASTER SIGN PACKAGE FOR PHASE II OF BILTMORE PARK TOWN SQUARE

Vice-Mayor Jones opened the public hearing at 6:55 p.m.

Interim Planning & Development Director Shannon Tuch said that this is the consideration of a signage plan for Phase II of Biltmore Park Town Square. This public hearing was advertised on July 13 and 20, 2007.

Earlier this year, City Council adopted an ordinance that allows larger developments an opportunity to propose a "signage plan" that would address on-site signage in a comprehensive fashion. This represents the first signage plan reviewed by staff; as a consequence, we would appreciate any Council feedback about the ordinance, review process, and submittal package.

The subject signage plan is for the Biltmore Park Town Square. The plan covers the "public" signage for the development as well as the signage for the businesses; individual sign permits must be applied for separately and are not part of this plan approval process.

Since the subject submittal is so comprehensive, this review will group the proposed signage by general category to simplify decision-making.

Traffic control signs – These include sign types S and T. The Town Square streets will be public and would ordinarily be signed with standard City street name signs, stop signs, etc. The applicant is proposing custom frames for signs like stop signs. Custom street name signs are also proposed. Staff supports such efforts to create community identity and our review indicates that this approach is satisfactory under certain conditions. All signs that control traffic must meet MUTCD standards in terms of location, size, color, message, shape, and height. Additionally, all poles supporting any of these signs must meet the breakaway standards for such poles. Finally, since these are custom frames and, in some cases, entire signs, the City will require a maintenance agreement with the developer to place maintenance and replacement on the developer for perpetuity so that the general public will not bear the extra expense of City maintenance and replacement of custom signage.

Directional signs – These include sign types D, E, F, G, H, J, K, L, N, R, and X. These signs provide directional information to persons inside the development. While the applicant could perhaps use the provisions of the City sign code to provide directional signage, staff finds the applicant's proposal to be an enhancement over what is more generally allowed by code. When a comprehensive update of the City sign code occurs, staff would want to include some of these options to improve our directional sign allowances to make them more attractive and effective. The proposed directional signs should have conditions placed on them to eliminate conflicts with City safety requirements. Freestanding signs should be placed outside of sight distance triangles, signs should not block sidewalks and provide for adequate pedestrian room (including meeting ADA clearance standards), and any signs placed in sidewalks or over rights-of-way should comply with the requirements of the building code that address clearance heights for pedestrians and vehicles, as applicable.

Gateway signs – These include sign types B, BB and C. The Town Square development is currently the largest Urban Village project in the City. As a consequence, staff believes enhanced signage to "highlight" the project from its immediate periphery is appropriate, to a degree. Gateway (monument) signs B and BB seem entirely appropriate in terms of purpose and scale for this development provided sight distance triangle requirements are met and any necessary encroachment agreement requirements (if located in public rights-of-way) are complied with, including private maintenance and liability insurance. Sign C, however, is extremely large and is located above the roof of the structure to which it is attached. Additionally, while located internally on the site, its message appears to be directed to passerby traffic on the nearby interstate. No specific dimensions are provided but staff estimates the size of the sign at over 700 square feet using the letter height information provided by the applicant. Additionally, the prominent location may prove problematic for residents of Biltmore Park outside the Town Square area. Staff recognizes the regional destination nature of this development and is not opposed to some large signage directed toward I-26 traffic. We would be more comfortable with, say, a 350 square foot (or even larger) sign attached to the rear wall of the theater to identify the site to those on the interstate.

Tenant signs – These include sign types P, V, W, Y, Z, AA and CC. Staff finds these proposed tenant signs to be acceptable within certain size and number limits. The table below

serves as our recommendation on sign size and number. Any sign overhanging a pedestrian or vehicle way must comply with the clearance requirements of the building code.

Staff recommends a maximum of 20 square feet and only one sign per business on the window tenant identity signage. The applicant has requested a maximum of 25 square feet and in order to promote creativity not limit the number of signs. Staff is comfortable with that change and will support that.

Additionally, staff recommends an additional allowance from those requested by the applicant. Since this is an urban environment, staff suggests that tenants be given the opportunity to place A-frame signs like those allowed in the Central Business District (CBD) (subject, of course, to the same placement and size standards for such signs).

SIGN TYPE	DESCRIPTION	MAXIMUM SQUARE FOOTAGE
P	Residential Lobby Sign	20 square feet; one per lobby access
V	Major Tenant Building ID	One square foot for every one linear foot of building façade to which the sign is attached up to a maximum of 200 square feet; one such sign per facade.
W	Office Lobby Sign	20 square feet; one per lobby access
Y	Tenant Blade Sign	4 square feet; one per tenant facade
Z	Hours of Operation Sign	4 square feet; one per door open to public
AA	Window Tenant Sign	20 square feet, not to exceed 25% of area of window to which sign is attached; one per tenant façade
CC	Tenant ID Sign	One square foot for every one linear foot of tenant façade to which the sign is attached up to a maximum of 75 square feet; one such sign per façade having tenant access.
DD	Office Tennant ID Sign	125 square feet; one per building; maximum 2 total for entire development

The applicant has also requested the ability to locate up to four "Major Tenant" identities on the south elevation of the movie theater which would normally be considered off-premise signage and would not be allowed per code. This application process could allow for that provision; however, staff has concerns over this request primarily due to the extent of signage that would already be permitted through the adoption of this custom sign package where it is believed that tenant identity would be more than adequately accommodated. Four tenants with letters that are 4' tall could result in signage well in excess of a typical billboard face (300 square feet) and has the potential for adding to the visual clutter along Interstate 26. At the time of this public hearing, the applicant has withdrawn this request.

Lastly, the applicant is requesting the ability to reserve the right to comply with existing code requirements/allowances in place of those set forth in this package (note in upper right hand corner of Sheet 2). This also concerns staff primarily due to the inconsistency that could result by allowing signage that was not originally designed to blend with the other proposed signage. This process affords applicants the opportunity to develop custom signage that works best for their specific development plans and to stray from the package undermines the cohesiveness and coordination of the overall design and, to some degree, the public benefit. Should Council wish to consider this option, staff would recommend allowing signage not described in this package to otherwise comply with those sign standards established specifically for the Urban Village zoning district. At the time of this public hearing, the applicant has withdrawn this request.

Pros:

- Comprehensive, graphically consistent signage
- Enhanced gateway and wayfinding (directional)
- Consistent with urban pedestrian-oriented destination development

Con:

- Sign Type C may be too large and set precedent for above-roof signs

Staff recommends City Council approve the signage plan for Biltmore Park Town Square as proposed, except as modified in the list of conditions as follows:

- All signs shall meet site distance triangle and building code requirements, including clearance requirements for pedestrian and vehicular traffic.
- Traffic control and street name signs shall meet MUTCD standards in terms of location, size, color, message, shape, and height. All poles supporting any of these signs shall meet the breakaway standards for such poles. A maintenance agreement acceptable to the City shall be required from the developer to place maintenance and replacement on the developer for perpetuity.
- Gateway monument signs shall be subject to an encroachment agreement acceptable to the City.
- Tenant signs shall comply with the size and number requirements of the table provided in this staff report.
- An allowance for A-frame signs in accordance with the provisions for such signs in the CBD shall be provided to the applicant as an added part of this signage plan approval.
- All signs in the project area shall comply with the proposed standards and no exceptions or variances are permitted.
- Sign Type C is not approved (rooftop sign)
- Off-premise Major Tenant ID on south side of the movie theater is not allowed.
- Project Identity signage is allowed on south side of the movie theater; size not to exceed 350 square feet (or other determined by Council).

The only questionable sign is the rooftop parapet project identity sign. It is proposed to be located on top of the parking structure. The original plan mentioned something close to 700 square feet to be located on that parking structure on the south side of the development. The City of Asheville prohibits all rooftop signage and staff is not comfortable in supporting that request. Some reasons why the City prohibits rooftop signs range from questionable concerns over safety, distraction to motorists, but mainly due to concerns over the aesthetics. Rooftop signage does create some visual clutter, detracts from other attractive features on the site; and competes with skylines, rooflines and ridgelines. Staff proposed a reduction in the size of the sign to 350 square feet to be placed on the south side of the movie theatre. That was the location that the applicant has proposed the 4 major tenant signs that they have now dropped. There is good visibility from the interstate and 350 square feet is reasonable. In consideration of staff's consideration, the applicant is okay with the size but is still requesting that the Council consider the rooftop location on the parking structure.

Staff fully supports the proposal before Council today with the (1) one small amendment that we increase the window tenant identity signage to 25 square feet in total; and (2) the rooftop sign not be allowed and that we instead consider relocating it to the south side of the movie theatre at a maximum of 350 square feet.

Mr. Harry Mark, Biltmore Park Town Square signage consultant, spoke in support of the signage plan. He explained why they felt it the rooftop of the parking deck is the appropriate place for the 350 square foot sign. Using pictures, he showed the proposed location of the sign atop the parking structure. Since parking decks are visually challenged, they feel that this will draw the eye away from the deck and place your attention to the sign and the overall project. Although the sign is located on top of this parking deck, there is a building behind the parking

deck that is approximately 30 feet taller and the sign will not compete with the skyline. He felt 350 square feet is an appropriate scale for the freeway visibility of the project. They do not recommend internal illumination, but an externally illuminated sign with a softer glow on the signs themselves. They don't feel that the sign will create clutter, but create identify for an enhanced experience for the shopper and for the resident.

The President of the Biltmore Park Homeowners Association supported staff's recommendation that the 350 square foot rooftop sign be located on the south side of the movie theatre.

Ms. Paula Youngblood, Biltmore Park resident, urged Council to keep the residential community in mind. They want to keep the quaint urban village atmosphere.

Vice-Mayor Jones closed the public hearing at 7:16 p.m.

There was a brief discussion about the location of the parapet sign.

City Attorney Oast said that in order to ensure that this has the same enforceability as zoning regulations this action should be adopted as an ordinance. With the exemptions being outlined by Councilwoman Cape, he read the following ordinance: "Whereas the City of Asheville has the authority pursuant to N.C. Gen. Stat. sec. 160A-381 to adopt and amend zoning ordinances, including sign regulations; and Whereas, following a public hearing on July 24, 2007, the City Council has determined that it is in the interest of the City to adopt the proposed sign package for the property known as 'Biltmore Park Town Square' as shown on Exhibit A (which will be attached to the ordinance); Now, therefore, be it ordained by the City Council of the City of Asheville that the sign package attached hereto as Exhibit B (which will be attached to the ordinance), be an the same is hereby adopted as the sign regulations for the property known as 'Biltmore Park Town Square, except as modified in the following list of conditions: (1) All signs shall meet site distance triangle and building code requirements, including clearance requirements for pedestrian and vehicular traffic; (2) Traffic control and street name signs shall meet MUTCD standards in terms of location, size, color, message, shape, and height. All poles supporting any of these signs shall meet the breakaway standards for such poles. A maintenance agreement acceptable to the City shall be required from the developer to place maintenance and replacement on the developer for perpetuity; (3) Gateway monument signs shall be subject to an encroachment agreement acceptable to the City; (4) Tenant signs shall comply with the size and number requirements of the table provided in this staff report; (5) An allowance for A-frame signs in accordance with the provisions for such signs in the CBD shall be provided to the applicant as an added part of this signage plan approval; (6) All signs in the project area shall comply with the proposed standards and no exceptions or variances are permitted; (7) Sign Type C is not approved (rooftop sign); (8) Off-premise Major Tenant ID on south side of the movie theater is not allowed; and (9) Project Identity signage is allowed on south side of the movie theater; size not to exceed 350 square feet; and (10) increase the window tenant identity signage to 25 square feet in total."

Councilwoman Cape moved to approve Ordinance No. 3507 as read by City Attorney Oast. This motion was seconded by Councilman Newman.

Ms. Tuch responded to Councilman Mumpower's question if staff was aware of any trend nationally, for the parapet sign in question, for creative efforts to draw attention to commerce.

Ms. Tuch said that in conference with the applicant, they were requesting that should Council prefer the alternative where the sign is 350 sq. ft. on the side of the building, due to concerns of visibility at the southern side of the movie theatre, that they would like Council to consider a 350 sq. ft. wall sign on either the southern side of the movie theatre or possibly just down on the side of the parking structure where they had proposed the rooftop sign. Staff indicated that they would not have any problem with either location.

Councilwoman Cape said her motion was that it be a side attached sign.

Councilman Mumpower felt the site visibility for the residents is marginal at best. He felt that requiring 3.5 feet tall letters on the parapet sign is exerting an unnecessary level of control. Biltmore Farms doesn't have a reputation of being tacky and this has some potential for being unique. He felt we are guilty of creating a double standard. He felt we should modify our ordinance on signs to give other people the opportunity to do some things that this applicant is proposing.

The motion made by Councilwoman Cape and seconded by Councilman Newman carried on a 4-2 vote, with Councilman Davis and Councilman Mumpower voting "no."

City Attorney Oast said that due to the vote, this ordinance will need to come back to Council for a second reading.

ORDINANCE BOOK NO. 24 - PAGE 86

Closed Session

Vice-Mayor Jones said that during City Council's break, they would conduct a closed session. At 7:27 p.m., Councilwoman Cape moved to go into closed session in order to (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: City of Asheville; May 1st We Are One America Committee; State of North Carolina; and County of Buncombe - The statutory authorization is contained in G.S. 143-318.11(a)(3); (2) To establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of contracts for the acquisition of real property by purchase, option, exchange or lease. The statutory authorization is contained in G.S. 143-318.11(a)(5); and (3) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations, provided that any action authorizing the payment of economic development incentives will occur in open session. The statutory authority is contained in G.S. 143-318.11(a)(4). This motion was seconded by Councilman Freeborn.

Councilman Mumpower asked for a friendly amendment to divide the motion, taking out the Sullivan Act litigation involving the City of Asheville, State of North Carolina and County of Buncombe.

Councilwoman Cape and Councilman Freeborn agreed to the friendly amendment.

The amended closed session motion carried unanimously.

At 7:33 p.m. Councilman Freeborn moved to go into closed session in order to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: City of Asheville; State of North Carolina; and County of Buncombe - The statutory authorization is contained in G.S. 143-318.11(a)(3). This motion was seconded by Councilwoman Cape and carried on a 5-1 vote, with Councilman Mumpower voting "no."

At 8:00 p.m., Councilman Freeborn moved to recess closed session and continue it after the formal meeting. This motion was seconded by Councilman Davis and carried unanimously.

V. UNFINISHED BUSINESS:

A. CONTINUATION OF PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE RELATING TO REVISIONS TO THE STORMWATER EROSION CONTROL ORDINANCE

As this item was discussed earlier in the meeting, Mayor Bellamy was not present.

Vice-Mayor Jones said that this public hearing was held on June 26, 2007, and continued to this date.

City Manager Jackson said that since the June 26, 2007, meeting, staff has held a public meeting on July 19, 2007, inviting river property owners, the River Design Review Committee and the general public. Staff also met with the Greenway Commission at their regular meeting on July 12th and the City Manager's Panel on Development Process on July 11th. Staff presented detailed explanations, however, the stakeholders preferred to see the final documents. Therefore, staff recommends that City Council continue the public hearing until September 11, 2007, in order to give public ample opportunity within which to review the final documents and for staff to present a cleaner recommendation to Council.

In response to Councilman Freeborn, Assistant City Attorney Martha McGlohon believed that Director of Transportation and Engineering Cathy Ball has discussed this need for continuance with the appropriate state agency. She said that we were required to have an ordinance in place by July 1, 2007, and the consequences of not having an ordinance in place is that someone could bring a lawsuit against the City.

Councilman Mumpower moved to continue the public hearing until September 11, 2007. This motion was seconded by Councilman Davis.

Councilman Freeborn felt we should act in a more timely manner and suggested a friendly amendment to continue the public hearing until August 28, 2007, which closes the timeframe within which the City is open for a potential lawsuit and is closer to the date of compliance (since City staff felt that at least 4 weeks would give the opportunity for two additional meetings).

Councilman Mumpower did not accept the friendly amendment in that he felt City staff recommended September 11 intentionally.

In response to Councilman Freeborn's concern about the lack of compliance, Ms. McGlohon believed that the State would consider all of the good faith efforts the City has made in that we have proceeded with all due diligence in an expedited manner to try to involve the community and get the ordinance adopted.

The motion made by Councilman Mumpower and seconded by Councilman Davis to continue the public hearing to September 11, 2007, failed on a 2-4 vote, with Councilman Davis and Councilman Mumpower voting "yes" and Vice-Mayor Jones, Councilwoman Cape, Councilman Freeborn and Councilman Newman voting "no."

Councilman Freeborn moved to continue the public hearing until August 21, 2007. This motion was seconded by Councilman Newman and carried on a 4-2 vote, with Councilman Davis and Councilman Mumpower voting "no."

B. ORDINANCE NO. 3508 - ORDINANCE ADOPTING THE 2007-08 AMENDMENTS TO THE CITY'S FEES & CHARGES MANUAL

ORDINANCE NO. 3509- BUDGET AMENDMENT FOR STAFFING AT BEE TREE WATER TREATMENT PLANT

At 8:03 p.m., Vice-Mayor Jones turned the gavel over to Mayor Bellamy.

Mayor Bellamy said that during Council's budget process, the motion adopting the Fiscal Year 2007-08 annual operating budget did not include adoption of the fees & charges. City staff has requested clear direction from Council.

City Manager Jackson said that staff is requesting clear direction on the treatment of fees and charges in the General Fund and Council's preference on whether or not we include the Revenue and Finance Committee's recommendation as part of the Council adopted budget and whether it was Council's intent to adopt the Water Fund fees. It was staff's assumption that those were to be approved and built in with that assumption is that the staffing for the Bee Tree Water Treatment Plan (in the amount of $338,090) would be funded from the Water development fees.

On June 19th, 2007, City Council adopted the FY 2007/2008 annual budget. Typically when Council approves the annual budget ordinance, a separate vote is held to affirm support for the Fees & Charges recommendations. However, this year a separate vote was not taken. In order to provide staff with direction on this issue, we are requesting that Council review the recommendations and vote to adopt FY 2007/2008 Fees & Charges.

Most of the Fees & Charges adjustments involve General Fund fees, but does include a proposed adjustment in the Water Fund's development fees. The recommended adjustment to the Water development fees will generate an estimated $480,000 in revenue, which will provide the necessary resources to fund the staffing plan to bring the Bee Tree Water Treatment Plant back into service.

Staff requests that Council review the FY 2007/2008 Fees & Charges recommendations and affirm the following actions: (1) General Fund Fee Adjustments; and (2) Water Fund Fee Adjustments & Bee Tree Staffing Plan.

Mayor Bellamy said that members of Council have previously received copies of the ordinances and they would not be read.

Councilman Freeborn moved to (1) adopt Ordinance No. 3508, affirming support for the fees & charges recommendations (from the Revenue and Finance Committee) in the General Fund as part of the Council adopted budget including an adjustment in the Water Fund's development fees and (2) adopt Ordinance No. 3509, a budget amendment in the amount of $338,090.00 to fund staffing at the Bee Tree Water Treatment Plant. This motion was seconded by Vice-Mayor Jones.

Ms. Elaine Lite questioned increasing some parks and recreation fees that are utilized by low income families vs. increasing the building and construction cost fees.

Rev. Christopher Chiaronmonte questioned the inequity of a man with a hotdog stand who is required to have $1 Million of liability insurance where large restaurants are only required to have $500,000 of liability insurance.

City Manager Jackson explained that the process we go through on an annual basis for all City fees is to look at how they compare to the cost of delivering the service. We question if we are recovering from those who use the services and if not, do we know the reason why. We want to keep Council apprised of what our cost-recovery basis is. We also try to look at historical trends, i.e., how many years has it been since we have adjusted the fees. In addition, we also look at the market comparisons.

Building Safety Director Robert Griffin responded to the question raised about building permit fees, noting that our higher minimum construction cost fees are still one of the highest in the state on a comparison basis.

Vice-Mayor Jones gave examples of how part of the fees that are being proposed are actually a deeper discount for our citizens. From her perspective, we have held the line for the people that are the most in need in our community that are utilizing our parks and recreation centers.

In response to Councilwoman Cape, City Manager Jackson said that training for our inspectors is factored into the cost recovery.

Councilman Freeborn spoke in support of the annual swim and annual bus passes. He felt that is a great way to utilize City services and save money.

The motion made by Councilman Freeborn and seconded by Vice-Mayor Jones carried on a 6-1 vote, with Councilman Mumpower voting "no".

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ORDINANCE NO. 3509 - ORDINANCE BOOK NO. 24 - PAGE 94

C. PROGRESS REPORT ON THE REDEVELOPMENT PLAN FOR CITY-OWNED PROPERTY

Economic Development Director Sam Powers said that this is a status report on the progress of redevelopment opportunities for city owned properties; and consideration of approval of Phase II Additional Scope of Services for Project Management for City Owned Properties (RFP phase) in an amount not to exceed $66,850.

In January 2007, City Council approved proceeding with Phase II of evaluation of city owned properties. Council approved a contract with the firm Real Estate Research Consultants (RERC) for a Scope of Services to assist the City with the project management associated with the structure and development of the Request for Qualifications (RFQ) process for redevelopment of City owned properties. The project management firm conducted a Market Scan, and assisted with in depth stakeholder meetings. Four sites were recommended and approved by Council to be included in an RFQ. Staff and the project manager collaborated in the development of the RFQ document, and in developing a detailed list of potential developers. The RFQ was advertised in the southeastern US and in real estate publications.

The RFQ closed on July 17th, and the City received 14 Statements of Qualification (SOQ) from interested development teams. Local and national developers submitted SOQs. Staff considers the submittal of 14 SOQ to be a very successful indicator of interest in the City sites. Each of the four sites received expressions of interest, with two of the four sites receiving the most interest. Staff and the Project Manager will now conduct an evaluation of the Statements of Qualification received from development teams. The current timeline for proceeding with the four Phase II sites is as follows:

Council approval additional Project Management Scope of Services (RFP Phase)	July 24, 2007
Notification of adjacent property owners	August 7, 2007
Evaluation and Council Approval of Pre-qualified Develop List (Announced short list of qualified Development Teams)	August 14, 2007

Public Open House	September 6, 2007
Meet with short listed teams to discuss subsequent RFP procedures	September 14, 2007
Formal Request for Proposal (RFP) documents distributed	October 12, 2007
Comprehensive RFP responses due from short listed firms	January 31, 2008
Interview with respondents, if necessary	February 22, 2008
Detailed proposals ranked	March 7, 2008
City Council Approval of Rankings	March 18, 2008
Negotiations with preferred Development Team for each site initiated by	March 28, 2008

At the time of Council's approval of the Project Management Scope of Services, staff indicated that there would be two additions to the original Scope of Services. The first addition would allow the project management consultant to assist the City in the RFP phase once the short list of developers is formed. The second addition would be a third phase of detailed negotiations with any firms advancing from the RFP phase into the Development Agreement phase.

The action requested from Council is to approve the Addition to the Project Management Contract Scope of Services approved on March 6, 2007, by City Council. This will allow the City to build upon the identification and qualification of developers conducted in the RFQ Phase by taking the next step of outlining the City's specific expectations and requirements for each of the four sites and inviting the pre-qualified developers to propose in some detail how they would approach, finance, and implement development on those sites consistent with the City's goals.

Funding for this RFP Phase addition to the Scope of Services is available in the City's 2007-08 Budget in the Office of Economic Development budget. Therefore, a budget amendment is not required.

Pros:

- Assistance to staff and Council in determining appropriate mix or scale of retail, residential, office, lodging, and civic uses within development sites.
- Ability to advise staff and council concerning the expectations about the market's ability to support the above or similar uses.
- Knowledge of analytical processes to review financial and technical capabilities of respondents to RFQ and RFP that are not within the scope of staff expertise.
- National project experience in developing similar public offerings of property to developers to achieve specific public goals.

Con:

- City will be required to provide compensation to consultant prior to cost recovery.

City staff recommends City Council authorize the City Manager to approve the additional RFP Phase Scope of Services with Real Estate Research Consultants for professional services required for project management services in an amount not to exceed $66,850.

In response to Councilman Davis, Mr. Powers said that the project management assistance in the next phase is necessary as we are going to be developing very specific requirements for each of the four sites, in terms of what Council is requesting and what their

desires are for the four sites. Staff and the project manager understand the importance of getting the kinds of proposals submitted that Council will want to see.

Councilman Freeborn moved to adopt a resolution authorizing the City Manager to enter into an agreement with Real Estate Research Consultants for Phase II of the project management professional services for City-owned property. This motion was seconded by Councilman Davis.

Throughout discussion, Mr. Powers responded to various questions/comments from Council, some being, but are not limited to: were any responses from the RFQ site specific proposals; do we have the ability or expertise to proceed in-house; what is the next step in this process; how does this work with the Center City Plan; does the $66,850 take us through the March 28, 2008, timeline - the final phase; is there a link with this process in the other various development plans, i.e., Parking Master Plan, updated Center City Plan, etc.; do we have a timeline for the Downtown Master Plan; how many pieces of City-owned property did we start looking at; at what stage will we solicit specific public input on each of the four properties; what will the public open house format look like; are there creative ways for the City to remain a partner and retain some assets at the same time, e.g., long-term leases; and do the properties have to be sold at market rate.

Councilman Mumpower felt this is a flawed process. He sees a lot of expense and dollars being invested in what ultimately has the largest potential to be a dead-end invitation for these developers. With the current climate in Asheville, the chances of developers with high dollar initiatives getting their projects through Council and this community is very low. Regarding affordable housing, he believes there may be potential to duplicate the model in Cherokee that targets affordable housing initiatives.

Mayor Bellamy said that the model in Cherokee is a land trust and over the coming months, as the Affordable Housing Task Force convenes that will be one of the issues they put forth to Council to consider.

Mayor Bellamy said that the bottom line for what she would like to see, not necessarily in the RFQ/RFP process, is the long term planning for our needs related to building and growth for the City of Asheville.

City Manager Jackson said that we are doing facility planning as part of the relocation of the park maintenance facility that is included in this process. Separately, staff and a firm has been engaged to go through each of the departments and identify what their projection is of growth, staff needs, space needs, etc. and thereby developing a facility assessment. He said we are inventorying the needs, planning for the future and hope to have a report back to Council this fall.

Mayor Bellamy was concerned that not all neighboring property owners were informed of the RFQ/RFP process. Mr. Powers said that they have had stakeholder meetings with what they believed to be most of the property owners for the four pieces of property and they will also be sending out post-cards and announcements about the open house to all adjacent property owners.

When Mayor Bellamy asked if it was too late for adjacent property owners to put in a proposal, Mr. Powers said that the deadline for submitting SOQ has closed. However, Council has the right to amend the process at any time.

In that Mayor Bellamy felt that adjacent property owners should have an opportunity to participate, she asked for a friendly amendment to amend the process allowing adjacent property owners an opportunity to submit a SOQ.

Councilman Freeborn and Councilman Davis each accepted the Mayor's friendly amendment to their motion.

Mayor Bellamy wanted to make sure that all adjacent property owners, big or small, are notified about this process and allow them to be involved if they choose to. She suggested sending out the notices by certified mail to the last known address, just to verify that we have done our best to inform them of the process.

During a clarification by Councilwoman Cape of the public open house, Mayor Bellamy asked staff to consider a Saturday in addition to the September 6 date for the public open house in order to gather as much public input as possible.

Councilman Newman envisioned that with each of the four properties the end result would be a very specific proposal for the future of the site and then the development agreement. He is supportive of taking step and if that process works, that's great. But, the only downsize to it that he sees is that development is a risky business. Let's keep our eyes wide open on this process as we go through it because he can envision scenarios where it wouldn't make sense for the City to walk hand in hand with the developer all the way to the end of it. He likes the idea of getting public input and identifying qualified people, but these properties are not needed for City purposes and again he can envision where it might make sense from our standpoint to simply transfer ownership and let whoever buys the property assume more of the risk. Right now we are investing a lot of funds into it and we are also consequently assuming more risk. Let's keep our eyes and options open on what is the best way to proceed as we go forward on each of these projects.

Mayor Bellamy could not support the motion because, from the retreat, the focus was to be on affordable housing and we have gone away from that. If there was an emphasis on affordable housing with some commercial development at the base of the building that would be better. But when we get into lodging and other uses, she would not be supportive of it. Also, in the past looking at the RFP's requested, the cost was too high to make it feasible to do affordable housing, so we are creating a scenario which calls for a subsidy which means we will have to have higher price condos to offset that balance. If we don't get more tools to work with we will have problems going forward and will not get the product we really want. We may get a higher end mix and maybe 10-15 units of affordable housing, but not exactly what we want. When the idea was brought up originally, it was presented of how can we have affordable housing in our community and this has expanded in a lot of different ways.

Mayor Bellamy felt that if we look at these properties in the form of a TIF District we could probably get the intended outcome that we want, and partner with some other development that is occurring downtown, as opposed to the RFP process. She felt there are other creative ways to get to our main focus.

Councilman Newman suggested putting a restriction on one or more of the sites saying that whatever is built must have 25% of the units affordable, or whatever percentage we decide. That by itself affects the value of the property. He recalled that affordable housing was collectively identified as a high priority. However, all of these are unique properties and lend themselves to different things.

Mr. Powers said that in the RFQ process, based on the market overview, the consultants and staff felt (1) the site across from the Civic Center probably lended itself to more to something in a commercial nature like a hotel or mixed use; and (2) the parks maintenance facility was determined to be most appropriate for multi-family residential with limited supporting commercial uses. We tried not to limit people, but he did believe that the parks maintenance site, in particular, could have a more affordable or workforce component to it. At this point there is no guarantee. It is ultimately in the basis of cost that the developer has in the property. He did

believe there is interest, in especially the park maintenance facility site, for primarily housing that could potentially include a more affordable component.

Councilwoman Cape distinctly remembered bringing up that we had strategic goals that we wanted to have happen on these properties. She didn't understand why we moved ahead with the process that now we may abandon after soliciting interest from the development community to help us develop these toward strategic goals. There is enough interest where these properties can be developed with those strategic goals in hand. She wondered what has changed and why we cannot now achieve our strategic goals from when we first started this process.

Mayor Bellamy reiterated that the primary goal is, and was, for affordable housing. She attended a presentation (which the majority of Council was present at) on the Tax Increment Financing (TIF) District which showed a benefit analysis of a TIF District vs. the RFP/RFQ process, showing that a TIF District would financially be a wind-fall for developers who buy into this process. She also wanted to get the product that we know we want, noting that the RFP/RFQ process will cost more than a TIF District.

Mayor Bellamy recommended a worksession to look at all sides of this issue, including the RFP/RFQ process vs. a TIF District.

In response to Councilman Freeborn, Mr. Powers said that he didn't think postponing action would be detrimental because this is our proposed timetable and we reserved the right to change it. We certainly would want to notify the interested development teams and adjacent property owners.

In response to Councilman Freeborn, City Manager Jackson said that in soliciting the RFQ's we have communicated that Council wants to have strategic goals for the property and that while the land needs to be sold according to State law (at fair market value), that in order to accomplish Council's goals, Council will entertain financial assistance and development agreements with each of the properties.

Councilman Newman withdrew his motion and suggested that within the next 30 days we have a worksession to clarify what exactly we want to do strategically. He is not supportive of moving any type of development of city-owned property forward if it does not meet our strategic goals, one of that being workforce housing.

Vice-Mayor Jones said that our one foray into this so far has been all about affordable housing. She wanted the community to know that this is a process that we started and step one is underway. She felt this will be a real exciting project that will unfold. She hoped the community understands that what we really want is workforce housing for our community.

Mayor Bellamy respectfully disagreed with Vice-Mayor Jones in that this is mixed-income, not completely affordable housing.

Councilman Davis felt we must recognize that not all these properties are the same and he hopes we don't lose site of the Eagle-Market Street area. There are some opportunities with Mt. Zion and the developers who are coming in to do some affordability down there. He doesn't think it's realistic to expect we are going to get affordable housing out of the Office of Economic Development on Haywood Street or on the site across from the Civic Center. But we have to recognize that those are things that do pay good tax dollars that helps this community get to a better place. He thinks that we need to recognize those properties. He don't disagree that we need to have clarity amongst ourselves, and when we talk about TIF Districts, we also have to be aware that we have limited financing abilities. He hoped that we don't way-lay this process fearing that we won't achieve our goals because frankly that is what this process is doing the second phase.

Mayor Bellamy personally felt that from the questions raised today, Council needs clarification on what, exactly, are we trying to accomplish. She thinks that it will be clearer to her that if we say this site is 50% affordable housing or 70% affordable housing, that is the goal, but we have not outlined our goals. We have identified what is feasible or possible, but we, as a Council, did not stress what we want. In order for us to get clarity with a measurable and attainable goal, we need to know what those are up front, not just whatever we get back. If we want to move Eagle-Market Street area forward, that would be fine, but her concern is we have not articulated clearly what we expect, except we want our strategic goals met.

Councilman Davis agreed that we should put our goals out there and communicate those to the developers, but we have to rely on what the market will bear.

Councilman Newman said when we started off looking at these properties, we set broad goals, which affordable housing was a big part, and then other goals, like helping our tax base, growth management, green building, etc. Now as we develop more and more specific plans for each one of the sites, it would seem arbitrary for him to say on this property we want this much affordable. Hopefully this process gets us to be in a position that we can become more detailed about what is appropriate and feasible on each of these different sites.

Mayor Bellamy's concern is that if it's not clear, when the product comes back finished, it will not be what we wanted. We need to clarify our expectations and let the market respond to our expectations. This is the City's land. We are to look at the financing tools that are available to help assist the developers to give us exactly what we want.

It was the majority of Council's consensus to hold a worksession on this item, including the financing tools available, no later than 30 days from now.

VI. NEW BUSINESS:

A. CONSIDERATION OF AN APPEAL FROM AN ORDER OF THE BUILDING SAFETY DEPARTMENT ORDERING BUILDINGS LOCATED AT 1500 TUNNEL ROAD DEMOLISHED

City Clerk Lipe administered the oath to anyone who anticipated speaking on this matter.

Assistant City Attorney Martha McGlohon said that this is the consideration of an Appeal from an Order of the Building Safety Department ordering the buildings located at 1500 Tunnel Road, demolished.

1500 Tunnel Road is the site of the former "Days Inn Motel," consisting of 3 separate buildings. Prior to its condemnation in 2004 by the Building Safety Department, (BSD), the Property operated as the Moutainview Inn.

The Property has a troubled history. In 2005, the BSD condemned the buildings as unsafe. Following a hearing, the buildings were ordered repaired so as to comply with the Building Code. After failure to comply, the buildings were ordered vacated and closed with all electricity and water terminated. An appeal of the order to repair, vacate and close was taken to City Council (CC). For almost one year, efforts to contact the owner and to verify the status of the person making the appeal to CC were not successful. In March of 2006, when the matter was placed on CC agenda, the owner surfaced. CC granted the BSD's motion to dismiss the appeal after granting the owner a continuance. The owners needed time to determine what they were going to do with the Property and BSD provided that time while in the meantime, the owners were required to clean up the outside perimeter, board up the open doors and windows and install a chain link security fence around the Property in April of 2006. No further action was taken and the owner once again disappeared between July 2006 and March 2007. During the owner's

extended absence, vagrants accessed the Property despite the presence of the perimeter fence. They removed the plywood boarding and pilfered sections of the plumbing, electric and HVAC systems. Unable to make contact with the owner, the Property was posted and a notice was advertised for a hearing in April 2007. Again, the owner surfaced to attend the hearing in which the BSD ordered the buildings demolished. The matter before CC today is the owner's appeal of that Order.

The owner contends that there was insufficient evidence upon which the BSD could conclude that the buildings warrant demolition in accordance with NCGS 160A-426. The owner further contends the owner's intent to renovate the buildings, the alleged good faith efforts made in that regard and the need an unspecified amount of time to accomplish the renovation task. The BSD asserts that the Order of demolition is valid in every respect, that the owner has had over four years to renovate the buildings and that to date, no substantial good faith efforts have been made by the owner to timely bring the buildings into compliance with the Building Code. The owner is asking CC to reverse the Order to demolish and or to otherwise provide an unspecified period of time to allow the owner to renovate the Property.

Pros:

1. Authorizes City staff to initiate appropriate proceedings to abate a fire and safety hazard.
2. Allows the City to proceed with obtaining bids to demolish the buildings at the City's expense.
3. Allows the City to be reimbursed for the cost of demolition by foreclosing on the Property if the cost of demolition is not paid.
4. Allows the City to consider the 2.5 million offer to purchase the owner allegedly already received for the Property.
5. Eliminates frequent calls to police fire, building and housing staff

Cons:

1. Requires the City to fund the cost of demolition and await the foreclosure process for reimbursement of the cost of demolition.
2. Requires the initiation of a lawsuit to commence the foreclosure process.

This action complies with City Council Strategic Operating Plan on Partnerships to Improve Critical Services and Infrastructure by providing sufficient, safe, and affordable housing for Asheville residents. As long as places such as the present Property exist within a City, its most vulnerable residents will always be prey to those who without proper permits, rent out such decrepit lodgings.

City staff recommends City Council affirm the Order of Demolition in its entirety.

Mr. Philip Roth, attorney representing the owner, requested Council extend the deadline on the demolition order an additional 45 days in that they have retained an architect Barbara Field and structural engineer who are drafting renovation plans. He said that his architect acknowledged that the building is a nuisance. He also felt that the structures need to be renovated or demolished, however, this is a large family business and the younger generation is taking steps to renovate the structures on this valuable piece of property. Again, he urged Council to extend the deadline for an additional 45 days.

Councilman Freeborn moves to affirm the Order of Demolition for 1500 Tunnel Road. This motion was seconded by Councilman Newman

Even though Councilman Mumpower was not inclined to grant the extension, he asked what conditions could be attached to that extension, if granted, e.g., clear contact person, clear telephone contact information; clear structure of the owners, etc. Ms. McGlohon explained that

while the Order to Demolish or to present sealed building plans to repair the buildings expires tomorrow, the City can't move forward to demolish the structures for a period of time. She explained that we will need to (1) find out how much the demolition will cost; and (2) come back to City Council for that funding. She anticipated that 45 days will expire between that time and the time we get back to Council with the request for funds to do the demolition. Because of the process itself, they will have that 45 day extension of time.

In response to Councilman Mumpower, Ms. McGlohon assured Council that within that 45 day time period if they were to submit plans showing sealed building plans, the Building Safety Department would work with them as staff has always been receptive to working with this property owner. Staff would not need to come back to Council to reverse the Order of Demolition as it is entered by staff.

Councilman Davis hoped that the property owners will take this 45 day timeframe and begin to renovate the buildings.

Vice-Mayor Jones was disturbed about the number of staff hours involved in this matter. She felt that Council should look for ways that we can begin to fine people that don't make an effort to remedy the problems.

Councilman Newman questioned if we have the option of issuing fines to motivate people to respond. Ms. McGlohon responded that there are finds under our Housing Code, but no fines set forth under the State law (which we use) for an owner's failure to make himself available or his failure to keep his building in a reasonably safe condition or in compliance with the State Building Codes. She said that the City can, however, assess the cost of demolition as a lien against the property.

In response to Councilman Newman, City Attorney Oast said that he would research if City Council has any authority to issue fines under the building safety laws.

Mayor Bellamy was supportive of making the property owner bring the structures into compliance, however, we would not support the motion as she has worked with the architect in the past and if she is drafting renovation plans, she would be amenable to giving them an additional 30 days, without the Order of Demolition in place.

The motion made by Councilman Freeborn and seconded by Councilman Newman carried on a 5-2 vote, with Mayor Bellamy and Councilman Davis voting "no."

B. RESOLUTION NO. 07-144 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH THE ASHEVILLE DESIGN CENTER TO PERFORM FURTHER ENGINEERING ANALYSIS OF THE ALTERNATIVE DESIGN FOR I-26 CONNECTOR PROPOSED BY THE ASHEVILLE DESIGN CENTER

ORDINANCE NO. 3510 - BUDGET AMENDMENT FOR ENGINEERING ANALYSIS OF THE ALTERNATIVE DESIGN FOR I-26 CONNECTOR PROPOSED BY THE ASHEVILLE DESIGN CENTER

Director of Transportation and Engineering Cathy Ball said that this is the consideration of a resolution authorizing the City Manager to execute an agreement with the Asheville Design Center, in the amount of $70,000, to perform an Engineering Analysis of the alternative design for I-26 proposed by the Asheville Design Center.

She said that the purpose of this report is to provide information on options for assisting the Asheville Design Center with an engineering evaluation of its I-26 proposed alignment.

On April 24, 2007, the Asheville Design Center, ADC, made a presentation to City Council. In their presentation, they outlined a proposed alignment for the I-26 Connector. At Council's June 26, 2007, meeting, the N.C. Dept. of Transportation, (NCDOT) reported that they had reviewed the ADC proposal and found that it had some problems with weaving and transitioning that made the alignment problematic. NCDOT indicated that in order to make the ADC's proposal work, it would need to have an expanded footprint looking much like NCDOT's alternate number four.

Council directed staff at its June 26, 2007, meeting to provide options for further assessing the ADC's proposal.

Two items for consideration when making this evaluation are scope of work and process for the contract administration.

Scope of Work: In order to determine how much it will cost to hire a consultant, it is necessary to determine the desired scope of their work. Three different options with estimated costs for each are outlined below:

Option A: The consultant would evaluate the methodology the North Carolina Department of Transportation used in their review of the Asheville Design Center's alignment. The consultant would meet with the NCDOT and review the criteria used to make its recommendation. The consultant would then provide City Council with a report detailing their findings.

Cost: $20,000
Time: 30 days

Option B: The consultant would complete the work described in Option A and, if possible, try to develop options to overcome the hurdles that NCDOT outlined their report.
Cost: $70,000
Time: 90 days

Option C: The consultant would perform an independent analysis of the Design Center's proposed alignment. They would determine if the alignment was feasible and/or any changes that could make the design work. This option would require a detailed review of the existing conditions as well as the proposed alignment.

Cost: Unknown
Time: 6 months

Contract Administration: The issue of contract administration deals with deciding which entity is the best party to manage the contract with the consultant. If Council chooses to move forward with an option listed above, the contract could be handled in one of two ways.

A. The City of Asheville would administer the contract with input from the Design Center.

B. The Design Center would hire the consultant and administer the contract with oversight from a technical review committee consisting of members from the City, ADC, NCDOT, County and the Technical Coordinating Committee, TCC of the Metropolitan Planning Organization (MPO). The City would enter into a contract with the Design Center to perform the work.

The Asheville Design Center has obtained their status as a non-profit agency and is able to contract with the City, as well as a consultant, to perform the work. Administering the contract under this scenario would still require some staff time. The Asheville Design Center has indicated its preference for the option B.

Staff recommends that the City contract with the ADC to provide engineering services to perform the option 2 or $70,000 option. Staff also recommends that a technical review committee be established by City Council to evaluate the process and findings of the engineering study.

Council may wish to request financial participation from the County, the MPO and other strategic partners to off-set the cost to the City of Asheville taxpayer.

Pros:

- Allow the study to begin quickly. It will take longer for the City to enter into a contract with the Consultant due to the City's need to solicit qualifications for projects over $30,000; and,
- Based on conversations with Alan McGuinn with the ADC, they would prefer to contract with the consulting firm directly, with oversight from the City; and,
- Assist the City in deciding how to move forward with the Design Center's proposed alignment.

Con:

- The cost to the City could be $70,000 to the City unless other agencies could assist in the cost.

Staff recommends that City Council authorize the City Manager to execute an agreement with the Asheville Design Center, in the amount of $70,000, to perform an engineering analysis of the alternative design for I-26 proposed by the Asheville Design Center.

Mayor Bellamy read into the minutes the following letter dated July 20, 2007, from Daniel Devan for Lyndo Tippett, Secretary of the N.C. Dept. of Transportation: "State Board of Transportation member Alan Thornburg, my staff members, and I have discussed the Asheville City Council's concerns regarding our review of the Asheville Design Center's (ADC) Alternative for the I-26 Connector project. Based on the concerns expressed by the city council, the Department is willing to, as set forth below, further work with the city and your designee regarding this alternative. Specifically, the Department is offering to have the private engineering firms under contract with us for the project to determine if the ADC Alternative can be modified to meet interstate design criteria and eliminate the operational and environmental concerns that were noted in our previous review. To assist the engineering firms in this review, we are asking that you appoint a representative to coordinate and work with the firms. We request that the representative have highway design experience. The Department and the private engineering firms will work closely and expeditiously with the city in this process. The Department will also coordinate with the Asheville Aesthetics Committee to determine the type of visualization work that may be necessary to more clearly convey the project alternative(s) under consideration. However, this review and coordination will cause delay in the completion of the Draft Environmental Impact Statement for the project and ultimately the right-of-way acquisition and construction schedules for the project. The extent of the delay will not be known until the study is complete. In addition, if the alternative can be modified, it does not ensure that the alternative will ultimately be selected as the 'Least Environmentally Damaging Practicable Alternative' for this project. I hope this information helps address and relieve the concerns noted by the city council. The Department looks forward to further coordination with the city regarding this important project. Please contact Mr. Thornburg at ... and let him know if you would like for us to proceed with this additional study and to provide the name of the city representative that will assist in this effort." She said that she met with Mr. Thornburg after the NCDOT presentation was made to City Council and expressed concerns of how their staff treated Council. On behalf of the NCDOT staff, Mr. Thornburg apologized on the way some of the answers were given to Council. He said that he would see that the NCDOT worked with City Council on this issue. She asked him to put that in writing, which was the letter she just read.

A resident of West Asheville was concerned that all aspects of Alternative B for I-26 and I-240 extend to about 100 yards from his affordable housing residence and he has not been notified at all about any of these I-26 proposal plans. He was concerned about how this proposed project affects him regarding noise, emissions, lighting, overall construction process, and relocation. He hoped the proposal does not go through.

Ms. Connie Mitchell, architect, said the Asheville Design Center is comprised of architects from our community and she trusts their input.

Mr. Joe Bassett encouraged Council to adopt the resolution.

Councilman Freeborn moved for the adoption of Resolution No. 07-N4 authorizing the City Manager to execute an agreement with the ADC center in an amount not to exceed $70,000 to perform further engineering and analysis of the ADC's proposed alternative to the I-26 Connector Project in conjunction with NCDOT efforts, and whoever the consultant is that is hired by the ADC be the City's representative to coordinate and work with engineering firms under contract with the NCDOT.) This motion was seconded by Councilman Newman.

Councilman Newman spoke about how the I-26 Connector project is the biggest development issue facing Asheville and Western North Carolina in the next decade. He praised the work of the ADC. Of all the different positive planning efforts in Asheville, he thinks this is the most visionary and probably the most important in terms of the potential it has for taking this project forward.

In response to Councilman Newman, Ms. Ball said that in discussions with the NCDOT and the ADC, their desire is to have a report back to Council in 90 continuous days but it may take 2-3 weeks to get geared up.

In response to Councilman Mumpower about delays, Ms. Ball said that there will be a delay but Mr. Thornburg couldn't commit to an exact timeframe. If the study takes approximately three months and they can't find solutions that will work, the study will end. If it will work, then it could take another 6 to 9 more months to bring this alternative up to the same level as the other alternatives that are being explored in the Environmental Impact Statement (EIS) and there may be other things that come up as well. Councilman Freeborn noted that the NCDOT felt that if they didn't fully investigate this alternative now, a viable alternative may come in later during the EIS phase which would then delay the project further.

Councilman Mumpower felt it was unfortunate that we have a process that people can arbitrarily delay. He felt the reason the NCDOT didn't offer solutions was because they felt the problems were insurmountable. He was not willing to spend any more money which will result in delays.

Mayor Bellamy said that the NCDOT has recently held a meeting taking Alternative 5 off the table and asked Asheville to support their decision. What is left on the table is two of the original proposals that the community was not supportive of and one that the ADC looked at and felt they could do better. She didn't see this as hijacking the process, but sees this as what is best for our community in the future. She couldn't speak to why the NCDOT has taken as long (since the mid-1980's) to get to this point, but does feel that there is a sincerity with the ADC's process in that they want to design something that our community can be proud of and be an asset to our community.

When Councilman Davis questioned how the $70,000 figure was arrived at, Ms. Ball said that the ADC made contact with firms and the City also checked a number of firms as well. The $70,000 amount does sound reasonable.

Councilman Davis had reservations about where we are going and what we are buying with that $70,000, however, would like to get past this process. Vice-Mayor Jones responded that since this is a study from an engineering firm, and they stake out their reputation when they place their seal on the study. Because of that she felt there is a lot less likelihood that they will say what the client wants to hear.

Mayor Bellamy said that there has been a couple of Buncombe County Commissioners who would like to see this item on their agenda, so she will ask them formally if they will pitch in, as well as the Land-of-Sky Regional Council.

Mayor Bellamy said that members of Council have been previously furnished with copies of the resolution and ordinance and they would not be read.

The motion made by Councilman Freeborn and seconded by Councilman Newman carried on a 6-1 vote, with Councilman Mumpower voting "no."

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Councilman Freeborn moved to adopt Resolution No. 07-144. This motion was seconded by Vice-Mayor Jones and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 24 - PAGE 96

C. RESOLUTION NO. 07-145 - RESOLUTION AMENDING THE RULES OF PROCEDURE FOR THE ASHEVILLE CITY COUNCIL

City Attorney Oast said that in recent months, issues have arisen and practices have developed regarding presentations at Council meetings that warrant addressing in Council's rules. With the availability and wide use of PowerPoint and other technology, presentations to Council increasingly include a major visual component. The proposed amendment to Rule 4 (as seen below) would require that these materials be submitted in advance in order to allow for appropriate staff review and preparation. This requirement would apply to scheduled presentations, not public comment on agenda items, or under informal discussion. This requirement would not apply to quasi-judicial matters or other matters where legal considerations may dictate a different process.

The Rule has also been divided into separate paragraphs for ease of reference (amendments appear as underlines):

4. AGENDA

(a) The city clerk shall prepare the agenda for each meeting as directed by the mayor and the city manager. Any council member may have an item placed on the agenda so long as the request is timely and is consistent with the notice requirements of Rule 2, if applicable, and subject to other requirements set out in these rules. A copy of all proposed ordinances shall be attached to the agenda.

(b) An agenda package shall be prepared that includes, for each item of business placed on the agenda, as much background information on the subject as is available and feasible to reproduce. In order to facilitate preparation of the agenda package, written materials (including display materials) that will be used in presenting an agenda item, including presentations by Council members, shall be provided to the city clerk no later than two Thursdays prior to the day of the meeting at which the item is scheduled. The preceding sentence does not apply to items originating with the City Manager or City Attorney. Each council member shall receive a copy of the agenda and the agenda package and

they shall be available for public inspection and distribution or copying when they are distributed to the council members.

PROS:
- Codifies some practices that have recently developed at Council meetings
- Clarifies the situations in which certain rules apply
- Clarifies that rule applies to presentations by Council members

CON:
- May require more advance preparation of agenda items

If Council approves of the proposed rule change, adoption of the resolution is recommended.

When Councilwoman Cape how much notice will be given when the Council member's item is placed on the agenda, Mayor Bellamy said that she would let them know 3 weeks in advance, so the Council member will have the opportunity to get the information to the City Clerk. Mayor Bellamy said that she would like that incorporated into a Rule and voted on as well at a future meeting.

In response to Councilman Freeborn, City Attorney Oast said that Rule 2 deals with the calling a special, emergency, adjourned or recessed meeting. What that essentially means is that you cannot present an item for consideration that the City Clerk was not able to advertise so as to meet legal requirements.

In response to Councilman Freeborn about what is the expectation of a "timely manner," Mayor Bellamy said that she would appreciate not being asked to put something on the agenda today for next week. After a request is received, she would like to have 30 days within which to schedule the item. But when we are at the meeting and someone arbitrarily adds something to a future agenda, she does not have the ability to review what is already scheduled (e.g., public hearings) and re-schedule items, if necessary. She is not trying to negate anyone's issues, but only asking for common courtesy to allow her the opportunity to review the agendas and place the item as soon as possible where appropriate.

When Councilman Freeborn requested access to the 8-week outlook, Mayor Bellamy reminded him that all of Council receives that information the first Friday of each month. She also noted that Council receives notice of the public hearings that are scheduled two weeks out.

In response to Councilman Newman, City Attorney Oast clarified that the materials for the agenda should be given to the City Clerk about 10 days before the formal meeting that the item is scheduled on.

In response to Vice-Mayor Jones, Mayor Bellamy said that any Council member can have an item placed on the agenda.

When Vice-Mayor Jones felt that at a very minimum Council needs to bring our agendas into lesser content, Mayor Bellamy appreciated that, however, the reality is that our agendas are not that bad, but Council discussion is what prolongs the meeting.

Vice-Mayor Jones said we limited the amount of public comment, but feels trapped because this is a no-win situation since anything can be placed on the agenda. If that starts getting abused by one Council member, then another Council member may wish to do that and then the Mayor is in the middle. Her point is that this is more complex than just this modification.

Mayor Bellamy said that she looked at the entire system holistically and created a system of Council Committees. That is being hijacked as well. It's difficult to sit here knowing that we

are spending a lot of time because we love to talk. Some are learning a lot and others are getting bothered. She doesn't have the answer to the balance, so she just tries to keep it going as smoothly as possible, but reality is on some issues we do like conveying our opinion a lot. She challenged someone in the community to time Council comments individually.

Councilman Mumpower felt we are fixing a problem that doesn't exist. There is no pattern of arbitrarily putting things on the agenda, but there have been last minute additions because of legislative issues, etc. He also felt that 1.5 weeks to get the material to the City Clerk is unreasonable. He felt that is not required of City staff and thus creating a double standard. Quite often we don't get our packet from staff until Friday afternoon before the Tuesday meeting and sometimes there is no staff information until the Tuesday meeting. He doesn't think the Mayor needs 1.5 weeks to view Council's material, unless there is some control or censorship issue, and he would be bothered by that. In the few cases where the Mayor has felt challenged or unsupported in her efforts to run the Council meetings, he suggested that a phone call or a discussion prior to the meeting probably could have resolved the majority of concerns. He will not support this action because he feels this will unnecessarily impair Council leadership initiatives and this is not a staff-run City. It is a Council-elected official run City and we should do everything in our power to encourage individual Council members to bring leadership initiatives forward and get it voted up or down on their ability to persuade the majority.

Mayor Bellamy said that as an English major she knows how powerful words are and it is not her goal to impair any activity by any Council member of their ability to be creative in bringing endeavors before this Council. However, as Mayor she is asking to have the authority to do what she has been tasked to do by the citizens - control over the agenda. Staff does have to adhere to this standard as well. Per her instructions, the City Clerk has pulled items off the agenda if the material is not submitted in a timely manner. What she is asking is that Council come into alignment with that schedule process. She understands that Council is thinking of ways to improve the quality of life for our citizens, but she just asks for the timely opportunity to schedule it so that all Council members and the community know that it is coming.

Vice-Mayor Jones asked if an outside group's presentation contained some inappropriate material, what is our ability to say that material is not appropriate. Mayor Bellamy said that she would screen the presentation in advance. Council already has a rule in place about being respectful of the Council and the public by refraining from the use of profanity or foul language, to refrain from personal attacks, etc.

There is a brief discussion about the partisan election presentation made by Councilman Mumpower on July 10, 2007, and whether or not the presentation was made available to the Mayor in advance.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Newman moved for the adoption of Resolution No. 07-145. This motion was seconded by Councilman Davis and carried on a 6-1 vote, with Councilman Mumpower voting "no."

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D. RESOLUTION NO. 07-146- RESOLUTION AMENDING THE CITY'S 2006 AND 2007 ACTION PLANS TO REALLOCATE FUNDING FOR DIRECT HOME OWNERSHIP ASSISTANCE FROM NEIGHBORHOOD HOUSING SERVICES OF ASHEVILLE TO MOUNTAIN HOUSING OPPORTUNITIES

Mayor Bellamy said that "I have been a proud employee for Mountain Housing Opportunities for the last 10.5 years. I've grown as an individual in a lot of different ways being a

member of that staff as a Marketing Manager. After a lot of prayer and a heart-felt decision, my husband asked me to come work with his business and I gladly accepted to work with him as a marketing manager, so to speak. As of July 31 I will no longer be employed by Mountain Housing Opportunities and this will probably be the last time that I will be recused - but there are some HUD standards so I will have to wait some time before I vote on their issues. In the past, whenever Mountain Housing Opportunities comes up, I had the mike over to the Vice-Mayor and I politely leave the room and don't discuss the issue with Council. But I felt like this affects me as Mayor that I need, from this seat, to announce to the community that I am leaving my friends, I'm leaving people who have supported me when others didn't. I'm leaving people who have been there for me when others in the community were not. And so, with that ..." Feeling emotional, Mayor Bellamy turned the gavel over to Vice-Mayor Jones.

City Attorney Oast said that he checked into the issue of the Mayor waiting a period of time before voting on their issues and that may not be the case.

Councilman Freeborn moved to excuse Mayor Bellamy from participating in this matter due to a conflict of interest. This motion was seconded by Councilman Mumpower and carried unanimously.

City Attorney Oast read the following HUD disclosure statement for Mayor Terry M. Bellamy: "Under North Carolina law, all members of City Council, including the Mayor, are precluded from voting on matters in which they have a financial interest or that involves their own official conduct. They are also prohibited from entering into contracts with the City or otherwise having a financial interest in such contracts. Further, recent amendments to the zoning enabling laws have expanded and clarified the issue of council member conflicts of interest with respect to land use decisions. Under State law, a Council member may not only not participate in the vote on matters in which they have a financial interest, they may not attempt to influence the vote or the administration of the contract. Where an employee of an agency that receives funds from the U. S. Department of Housing and Urban Development (HUD) becomes a member of the governing board of a unit of local government that makes decisions regarding those funds, federal regulations require the additional step of reporting the situation to HUD, and requesting an opinion as to whether that employee's governmental service is consistent with the intent of the regulations. When such opinions are requested, exceptions are made as appropriate. Mayor Terry Bellamy is an employee of Mountain Housing Opportunities, an organization that receives funds from HUD, through the City of Asheville. Although she is not directly involved in any HUD-funded activities, her election to Council in 1999 and as Mayor in 2005 triggers the application of the regulation requiring us to seek the exception with respect to Council actions involving the City's receipt or disposition of HUD funds. Our review – including analysis of the regulation, conversations with HUD officials, Ms. Bellamy and other officials at MHO – has indicated that Ms. Bellamy, because of the nature of her job, is not in a position to benefit directly from the receipt of HUD funds by MHO. Even so, as Mayor and a member of Council, State law would preclude her from voting on any matters that directly affected MHO. While State law affects the ability of a member of Council to vote on particular items, the exception required by HUD affects the City's ability to receive and administer HUD funds, and HUD officials have advised that the exception should be requested on a case-by-case basis. In this case, the action for which the exception will be requested is the amendment to the City's 2006-07 Action Plan to re-allocate funding for direct home ownership assistance from Neighborhood Housing Services to Mountain Housing Opportunities. (New Business item D. on the July 24, 2007, agenda.) This is brought to your attention now because public disclosure is one of the prerequisites of requesting the exception from HUD. Unless Council has questions or an objection, the City Attorney's office will send out the appropriate correspondence to HUD to inquire about and, if necessary, to secure the exception as soon as possible."

Community Development Director Charlotte Caplan said that this is the consideration of a resolution to amendment the City's 2006 and 2007 Action Plans to re-allocate funding for direct

homeownership assistance from Neighborhood Housing Services of Asheville (NHS) to Mountain Housing Opportunities (MHO).

NHS closed down its daily operations on June 30, 2007, after experiencing financial problems stemming from rising costs in its housing construction program. Its lending program, which provides second mortgage loans to low-income homebuyers, remains an active and viable program which has he ped over 60 families to buy homes in the Asheville area in the past year. The NHS Board has proposed transferring the program to MHO, which is willing to take it over.

The lending program is currently funded from several sources, which gives it considerable flexibility in meeting the needs of different clients. The following funds committed by the City to this program are currently unspent:

CDBG: $436,238 for loans in Asheville (balance of $59,988 from 2006 plus a new allocation of $376,250 in 2007).

ADDI (American Dream Downpayment Initiative): $34,949 for loans in Buncombe, Madison, and Transylvania Counties (balance of $10,023 from 2006 plus $24,926 in 2007).

Additionally, NHS was to be the administrative agent for $164,076 in HOME funds awarded to Buncombe County for loans in Buncombe County outside Asheville. Buncombe County is in process of selecting a new administrative agency for those funds, and we expect MHO will apply.

NHS also manages an extensive portfolio of loans from previous City-funded rehabilitation, housing construction, and direct homebuyer assistance programs. The value of the portfolio is approximately $1,800,000. Income from loan repayments must be used for CDBG- or HOME-eligible activities. There is provision in the original funding agreements for loans to be assigned to another entity, provided the City approves.

NHS and MHO have requested that the CDBG and ADDI funding, together with the existing loan portfolio, be transferred to MHO. MHO will also seek to become NHS's successor as the local NeighborWorks charter member, giving it access to other funding sources.

Re-allocation of the CDBG and ADDI funds to another agency is a non-substantial Action Plan amendment, requiring Council approval but no public hearing.

The Housing and Community Development Committee has recommended re-allocating the CDBG funding and the existing CDBG loan portfolio to MHO, and the Asheville Regional Housing Consortium Board has made a similar recommendation for the ADDI funds.

Pros:

- Continues a valuable and effective program with minimum disruption to its operation and staffing;
- MHO has proven capacity in operating a wide range of affordable housing programs;
- Retains a variety of funding sources under control of one agency - important for program efficiency and flexibility;

Con:

- Puts a lot of eggs in one basket. CDBG and HOME allocations to MHO for all its activities in Fiscal Year 2008 would increase from $1,116,608 to $1,522,720, or from 29% to 40% of total funds available.

Alternatives to the NHS/MHO proposal are:

1. Advertise a request for proposals from agencies interested in operating the program.
   Pro – Introduces open competition into process.
   Con – Will delay resumption of services; key staff may seek other employment;
   – MHO is likely to emerge as the best qualified, if not the only applicant.

2. Cancel loan program and re-allocate funds to other activities.
   Pro – Allows full exploration of other program options.
   Con – Loss of an effective program for making homeownership affordable.

Staff recommends that City Council approve a resolution to amendment the City's 2006 and 2007 Action Plans to re-allocate funding for direct homeownership assistance from Neighborhood Housing Services of Asheville (NHS) to Mountain Housing Opportunities (MHO).

On behalf of City Council, Vice-Mayor Jones thanked NHS for their great service to our community.

Vice-Mayor Jones said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Mumpower moved for the adoption of Resolution No. 07-146. This motion was seconded by Councilwoman Cape and carried unanimously.

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At this time, Vice-Mayor Jones turned the gavel back over to Mayor Bellamy.

VII. OTHER BUSINESS:

A. SECTION 287 (G) OF THE IMMIGRATION AND NATIONALITY ACT

Police Chief Bill Hogan said that based on City Council's direction to research the viability of the Asheville Police Department's participation in Section 287(g) of the Immigration and Nationality Act, I have compiled the following report.

Section 287 (g) authorizes the Secretary of Homeland Security to enter into agreements with state and local law enforcement agencies, permitting designated officers to perform immigration law enforcement functions, pursuant to a Memorandum of Agreement (MOA), provided that the local law enforcement officers receive appropriate training and function under the supervision of sworn U.S. Immigration and Customs Enforcement (ICE) officers.

This report contains a summary of findings as related to the Asheville Police Department.

- Section 287 (g) does not give local law enforcement blanket authority to act in the capacity of a federal immigration agent. The law allows state and local governments to enter into a Memorandum of Agreement (MOA) with the Homeland Security Department to act as immigration officers under direct federal supervision.
- The Henderson County Sheriff's Department has signed an MOA with the federal government to become the regional clearing facility for illegal aliens. This local agency would have the same arrangement with the Immigration and Customs Enforcement Agency (ICE) as the Mecklenburg County Sheriff's Department. To date, Henderson County has not been trained, which is required before their agency becomes the regional hub and transportation agency for illegal immigrants.
- We have attempted to contact the local ICE agent to discuss the details of a 287 (g) agreement but have been unable to meet with this gentleman. We wanted to know if ICE would recognize two regional agencies and enter into an agreement with both agencies. This question remains unanswered at this time.

- The sworn members of the Asheville Police Department are responsible for enforcing all criminal violations of state law and city ordinances.
- The majority of immigration violations are considered civil and are enforced through a civil deportation process.
- Any unlawful detention of an individual may subject the City of Asheville to a civil rights lawsuit under Title 42 USC section 1983.
- The city at its own initiative does not have the legal authority to detain and transport illegal immigrants to a regional processing facility.
- APD officers can only seize a person suspected of committing a deportable immigration violation if ICE has issued a detainer for that person.
- Pursuant to a properly issued detainer, a suspected illegal immigrant is detained at a local jail. ICE is responsible for going to the local facility to determine whether there is an immigration violation. ICE decides whether to release the suspect or transport the suspect to a regional processing facility for further action. Local law enforcement cannot force ICE to take a suspect for further immigration proceedings.
- Asheville police officers *already* detain suspected illegal immigrants involved in drug sales pursuant to 8 USC 1357, if the officers think the suspects are not lawfully admitted to the U.S., but only when specific conditions are met. The officer must immediately notify ICE regarding the facts and then ICE must issue a detainer. If ICE does not issue a detainer, the APD officer cannot continue to hold the individual for a suspected immigration violation. However, APD can detain the person for the state criminal law violation subject to a bond being set for release.

It is the Police Chief's recommendation that police personnel of the Asheville Police Department continue to focus their efforts on violations of criminal law. As we have done in the past, we will continue to address illegal immigration associated with violations of criminal law.

If it is the direction of City Council to pursue a 287 (g) agreement with the Secretary of Homeland Security, we will enter into such an agreement as quickly as ICE will assist and accommodate us in this request.

The following individuals spoke in support of the Police Chief's recommendation (1) to not participate in Section 287(g) of the Immigration and Nationality Act; (2) that the Police Department continue to focus their efforts on violations of criminal law; and (3) to continue to address illegal immigration associated with violations of criminal law:

Mr. Carlos Gomez, executive director of a health care safety net provider
Rev. Christopher Chiaronmonte
Ms. Ada Volkmer, citizen of the United States
Ms. Minnie Jones, civil rights leader
Ms. Sorto, speaking on behalf of the Center for Participatory Change
Employee of a transitional housing program for women and children who are homeless due to domestic violence
Ms. Althea Gonzales, Director of Health Parity of the Buncombe County Medical Society
Legal Assistant for the immigration attorney at Pisgah Legal Services
Ms. Jeri Soloman, Director of Internationally
A Catholic Priest
Ms. Heather Raybum, Asheville resident
Ms. Andrea Golden, Asheville resident
Ms. Edna Campos, Asheville business owner
Ms. Sara Hardin, citizen of the United States
Ms. Bango, area consultant

The following individuals spoke in favor of the City addressing illegal immigration:

Mr. H. L. Carlyle
Ms. Kathy Lack, Asheville business owner
Ms. Cathy Rhodarmer, Buncombe County resident

Police Chief Hogan responded to various questions from Councilman Mumpower, some being, but are not limited to: request for the name of the local ICE agent; how many illegal immigrants have we identified and transferred to ICE over the past two years; and what can happen to an illegal immigrant who is arrested for DUI and has no license.

Councilman Mumpower said that he is the ally of people who come to this country legally to uplift it. He is the enemy of people who come to this country illegally to use it. That is why he keeps bring this issue up. Statistics are not accurate because we have no way of measuring who we have - no way of identifying those people and the statistics only apply to people who are clearly identified. He read some of the illegal immigration laws of Mexico, e.g., there will be no special bi-lingual programs in the schools; all ballots will be in this nations language; all government business will be conducted in our language; non-residents will not have the right to vote no matter how long they are here; non-citizens will never be able to hold political office; foreigners will not be a burden to tax-payers; there will be no welfare, no food stamps, no health care or other governmental assistance programs; anyone who shall become a burden shall be deported, if you do come to this country illegally, you will be actively hunted and when caught, sent to jail until your deportation can be arranged, etc. He felt it's absolutely absurd that on the other side of the border they have draconian laws and on this side we represent the other extreme. He felt that Section 287 (g) is a symbolic step. We are trying to create some bridge to the federal government that gives us some ability to take some action. He will be back with more proposals.

Vice-Mayor Jones moved to adopt Police Chief Hogan's recommendations. This motion was seconded by Councilwoman Cape.

Mayor Bellamy said that sitting as Mayor, she goes to different meetings and some of the information received isn't public knowledge. She met with the U.S. Attorney's Office and talked about illegal immigration as it relates to illegal crimes and drug charges. During the meeting they talked about our illegal drug trade and the fact that in North Carolina we did a good thing in Raleigh of taking Sudafed off the shelves and requiring it to be bought behind the counter. Our local meth labs plummeted. But then they saw a spike going back up with meth usage and creation because it was being brought in. They also talked about how our region is being affected by uncut ice and uncut meth. It is unprecedented to anything that was being created locally. Regardless of whether people are mules, doing it for payment to get in the country legally, or because their families are being held hostage, the U.S. Attorney made a correlation between illegal activities and people coming into our country illegally. One reason why she asked for a local immigration study committee of objective people, people who care about good government, was to have them really look at these issues so we can have good data to see the statistics. She has heard conflicting numbers the last couple of weeks. The Charlotte-Mecklenburg model works because they have people who are sincere and who want to accumulate good data. She was conflicted not only because the Chief didn't support it, but because we don't have good data. There are some things that need to be addressed locally, and is this one of them. Again, she doesn't have the data to know if this is the best thing to do. She questioned if Sheriff Duncan feels the same way; does the District Attorney support it; how are we working with them, particularly because they are in charge of the jails; and have we received anything from Henderson County to say they want Asheville to join with them or do they feel like if they have more people supporting their initiative that maybe we will get more response from the Dept. of Homeland Security. There is no data.

Vice-Mayor Jones sympathized with the issue as she adopted a Guatemalan girl and it has taken her 3.5 years to get her daughter's citizenship, which process was expedited by Senator Dole. At some point along the way she will experience this issue. This is not a big

problem for us, but it is a big problem for our country. She is still conflicted about the Local Immigration Study Committee and felt this is a bad use of community energy. She was going to ask Council to re-visit that issue. She doesn't think this will take our community forward.

The motion made by Vice-Mayor Jones and seconded by Councilwoman Cape carried on a 6-1 vote, with Councilman Mumpower voting "no."

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Councilman Mumpower updated Council on his trip to New York City. He spent two days with drug intervention officers. Based on that exposure in New York, they have a model of success in driving their open air drug market underground. There is a model of success. He felt if they can do it, we can do it.

Councilman Davis updated Council on his, Mayor Bellamy and Vice-Mayor Jones' inter-city visit to Chattanooga, Tennessee, to review a homeless service campus model. He felt that was time well spent and hoped that we can assemble the information learned there and use that in the future.

Mayor Bellamy briefed City Council on her trip from Washington, D.C., earlier today. She has been traveling quite a bit talking to our local representatives and congressmen as well as our senators in order to keep Asheville in the forefront of their minds. Years ago City Council decided not to hire a lobbyist and so as Mayor she feels that as a policy-maker she should continue conversation with them. On behalf of the City of Asheville she had an opportunity to talk to Congressman Shuler and he gave her following update on what is happening financially for the City of Asheville. Some of them have passed the House and are going to the Senate and some are still pending: (1) City of Asheville - Asheville Replacement Buses - $300,000; (2) City of Asheville - Police Department Firing Range - $100,000; (3) City of Asheville - Methamphetamine Enforcement - $100,000; (4) UNC-Asheville - Zeis Science and Multimedia Building - $100,000; (5) Mission Hospitals - Mission Children's Hospital in Asheville - $200,000; (6) Blue Ridge Parkway - Visitors Center - $500,000; (7) Blue Ridge Parkway - Road Maintenance - $1.9 Million; (8) NC National Guard - Asheville Field Maintenance Shop - Pending; and (9) Mission Hospitals - Records System - Pending. Some additional grants that his staff is working on includes: (1) Asheville-Buncombe Community Christian Ministry - Homeless Veterans Reintegration Program - $600,000 over 3 years; (2) F.I.R.S.T. - Community Parent Resource Centers - $100,000; and (3) UNC-Asheville - Complete publication of Henry of Ghent's longest work - $80,000. Another thing she has talked with him about consistently is the shortage of agents we have in our community. On behalf of the 11th District, Congressman Shuler has written a letter to the Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives for additional agents. Said letter reads in part "According to my information, the area is allocated three agents and we only have one, leaving us two agents short." Congressman Shuler also sent a letter on Asheville's behalf to the Director of the Federal Bureau of Investigation. Said letter reads in part "According to my information, the area is allocated eight agents and one supervisor, and we only have four agents and one supervisor, leaving us four agents short." She also advised Congressman Shuler today about we are short in DEA agents so he will also look into that on our behalf. Senator Burr has assisted us in getting $200,000 appropriation for the Reid Center. This is a start in helping build a relationship. She also pressed upon them the fact that we wanted no more unfunded mandates. Today we delayed the talk of stormwater requirements and that was at the urging of our federal government to put that into place. It is an unfunded mandate that requires local governments to enact on people. She asked them lessen the number of unfunded mandates in the future.

Rev. Christopher Chiaronmonte questioned the possibility of conflict of interest of all Council members regarding partisan vs. non-partisan election.

Mr. H. L. Carlyle suggested City Council face all the seating and amenities in Pritchard Park inward like the "Great Wall of China." Regarding restrooms, he suggested placing a couple of port-a-johns in the area drilled into the ground.

At 11:53 p.m., Councilman Freeborn moved to go back into closed session. This motion was seconded by Councilwoman Cape and carried on a 5-2 vote, with Mayor Bellamy and Councilman Mumpower voting "no."

At 12:00 a.m., Councilwoman Cape moved to come out of closed session. This motion was seconded by Councilman Freeborn and carried unanimously.

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 12:00 a.m.

Vesta Lyle
CITY CLERK

Jerry M Bellamy
MAYOR

Tuesday – August 14, 2007 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Keisha Lipe

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Davis gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING AUGUST 14, 2007, AS "BOB CALDWELL DAY"

Mayor Bellamy read the proclamation proclaiming August 14, 2007, as "Bob Caldwell Day" in the City of Asheville. She presented the proclamation and gifts to Mr. Caldwell who briefed Council on some of his retirement plans after being the weather forecaster for WLOS-TV for 41 years.

II. CONSENT AGENDA:

Councilman Mumpower requested Consent Agenda item "B" be removed from the Consent Agenda for an individual vote.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JULY 24, 2007

B. RESOLUTION AUTHORIZING THE LAND-OF-SKY REGIONAL COUNCIL TO SUBMIT APPLICATIONS TO THE ENVIRONMENTAL PROTECTION AGENCY FOR BROWNFIELDS ASSESSMENT GRANT ON BEHALF OF THE CITY OF ASHEVILLE

This item was removed from the Consent Agenda for an individual vote.

C. RESOLUTION NO. 07-148- RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A MAINTENANCE AGREEMENT BETWEEN THE N.C. DEPT. OF TRANSPORTATION AND THE CITY OF ASHEVILLE TO ALLOW PUBLIC PARKING UNDER A SECTION OF BRIDGE #76 IN THE BILTMORE COMMUNITY

Summary: The consideration of a resolution authorizing the Mayor to execute a Maintenance Agreement between the North Carolina Department of Transportation (NCDOT) and the City of Asheville to allow public parking under a section of Bridge #76 in the Biltmore community.

The Asheville Area Habitat for Humanity, Inc. is located at 30 Meadow Road and they operate a Home Store from this location. In an effort to make sure their limited on-site parking is available for the customers shopping at the Home Store, the current staff parks their vehicles in an area under Bridge # 76. Unfortunately, this parking has come to the attention of the NCDOT and according to their current regulations; they cannot allow parking within highway right-of-way.

In an effort to be helpful, the NCDOT suggested that a maintenance agreement be executed between the City of Asheville and themselves that would give the City permission to use the subject area as a public parking area. Although the City cannot restrict the parking area for the exclusive use of the Asheville Area Habitat for Humanity, it probably would only be used by their staff due to its physical location. In addition, the Asheville Area Habitat for Humanity has asked for the City's help in resolving this situation.

Pros:
- This action satisfies an existing need for a non-profit agency.
- No funds are needed to construct the parking area.

Cons:
- The City is responsible for maintenance.
- The City assumes liability.

Staff recommends City Council approve a resolution authorizing the Mayor to execute a Maintenance Agreement between the NCDOT and the City of Asheville to allow public parking under a section of Bridge #76 in the Biltmore community.

RESOLUTION BOOK NO. 30 - PAGE 395

D. ORDINANCE NO. 3511 - BUDGET AMENDMENT TO RECEIVE A DONATION FROM THE CATHEDRAL OF ALL SOULS FOR THE PURCHASE OF BANNERS IN BILTMORE VILLAGE TO BENEFIT THE BILTMORE VILLAGE MERCHANT'S ASSOCIATION

Summary: The consideration of a budget amendment, in the amount of $3,000, to receive a donation from the Cathedral of All Souls for the purchase of banners in Biltmore Village to benefit the Biltmore Village Merchant's Association.

As part of the Rural Economic Development Center Biltmore Village Grant project, the City plans to purchase new pole banners for Biltmore Village. The $3,000 donation from the Cathedral of All Souls will be used in conjunction with grant funds to cover the cost of the banners.

Pro: Allows the City to purchase new pole banners for Biltmore Village as identified by the Biltmore Village Merchant's association as a need for Biltmore Village.

Con: None noted.

City staff recommends that City Council approve a budget amendment, in the amount of $3,000, to receive a donation from the Cathedral of All Souls for the purchase of banners in Biltmore Village to benefit the Biltmore Village Merchant's Association.

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E. RESOLUTION NO. 07-149- RESOLUTION OF INTENT TO CLOSE AN UNOPENED PORTION OF TRADE STREET AND SETTING A PUBLIC HEARING FOR SEPTEMBER 11, 2007

Summary: The consideration of a resolution of intent to close an unopened portion of Trade Street and request a public hearing on September 11, 2007 regarding this issue.

N. C. Gen. Stat. sec. 160-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, Phillip C. Price, on behalf of the adjoining property owners, has requested the City of Asheville permanently close an unopened portion of Trade Street.

Provided Council sets a public hearing, City staff will research and determine the pros and cons of the request. This will include determination of whether the closure affects abutting property owners, transportation plans, greenway plans, utilities, etc.

City staff recommends that City Council approve a resolution setting a public hearing for September 11, 2007, to close an unopened portion of Trade Street.

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F. RESOLUTION NO. 07-150 - RESOLUTION AUTHORIZING THE MAYOR ON BEHALF THE CITY OF ASHEVILLE TO EXECUTE A FEDERAL AVIATION ADMINISTRATION GRANT, 3-37-0005-32

Summary: The consideration of a resolution authorizing the Mayor to approve a Grant Offer from the Federal Aviation Administration (FAA) in the amount of $4,586,889.00.

The FAA has offered a grant agreement to the Asheville Regional Airport. This grant in the amount of $4,586,889.00 is for Airport Improvement Program Project No. 3-37-0005-32. This project consists of a terminal renovation and expansion project and other airport improvements.

Staff recommends City Council approve a resolution authorizing the Mayor to approve a Grant Offer from the FAA, in the amount of $4,586,889.00.

RESOLUTION BOOK NO. 30 - PAGE 397

G. RESOLUTION NO. 07-151- RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AND SUBMIT A THIRD PARTY RIGHT-OF-WAY ENCROACHMENT AGREEMENT BETWEEN THE N.C. DEPT. OF TRANSPORTATION, THE ASHEVILLE MURAL PROJECT AND THE CITY OF ASHEVILLE

Summary: The consideration of a resolution authorizing the City Manager to sign and submit a third party right of way encroachment agreement between the North Carolina Department of Transportation (NCDOT), The Asheville Mural Project and the City of Asheville.

As part of the logistics for implementation of the Lexington Avenue Gateway Mural, NCDOT requires the City of Asheville to enter into a third-party encroachment agreement with NCDOT and the Asheville Mural Project.

City Council's 2007 strategic goals for Sense of Place, Heritage, and the Arts include "support implementation of public art project on Lexington at I-240 in partnership with the Asheville Mural Project." City staff work to date with the Asheville Mural Project has included: garnering letters of support from the Downtown Commission and the Public Art Board; providing internal and external meeting and contact assistance including a public open house; and providing technical and logistical assistance for the project's implementation.

The Mural start date: September 12, contingent upon the processing of this encroachment agreement by City Council and by the NCDOT, assumption of 4 weeks turn around time total; pressure washing and priming completed by September 18; Phase I (Lexington Avenue section) of mural painting: projected completion by October 24 based on unlimited daytime access, 7 days a week; resume painting for phase II in March 2008 (due to weather); mural complete April 2008

Regarding coordination with adjacent projects, adjacent paving and improvements of newly acquired parking area are also scheduled to beg mid-September; Staff Bruce Black and Richard Grant coordinating.

There is no City funding involved in either the encroachment agreement or the implementation of the mural. A City water truck is being supplied for 1-2 days of pressure washing. Funding for adjacent regeneration of a former NCDOT lot under I-240 into an area suitable for parking (including paving, irrigation, lightin), electric and water service for community festivals) is being funded by parking services.

Staff is asking Council to consider authorizing this agreement that will address the temporary placement of scaffolding (for pressure washing, priming, and painting of the mural surfaces) in the NCDOT right of way. The agreement is necessary because the NCDOT does not enter into encroachment agreements with individuals, only municipalities.

The Legal Department has reviewed/approved the application for Council consideration; the City of Asheville is named as co-insured on Asheville Mural Projects general liability policy through April of 2008.The City of Asheville's Public Works department has agreed to provide traffic control for the encroachment area per MUTDC standards.

Pro: Authorization will support timely implementation of the project.

Con: Some drivers may be inconvenienced due to temporary encroachment of scaffolding.

Staff recommends City Council approve a resolution authorizing the City Manager to sign and submit a third party right of way encroachment agreement between the NCDOT, The Asheville Mural Project and the City of Asheville.

After a brief discussion, Councilman Davis moved to re-visit the small funding request by Asheville Mural Project, along with an update on it, on August 21, 2007 (with Mayor Bellamy's concurrence). This motion was seconded by Councilman Freeborn and carried on a 6-1 vote, with Councilman Mumpower voting "no."

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Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Freeborn moved for the adoption of the Consent Agenda. This motion was seconded by Vice-Mayor Jones and carried unanimously.

ITEMS PULLED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

B. RESOLUTION NO. 07-147- RESOLUTION AUTHORIZING THE LAND-OF-SKY REGIONAL COUNCIL TO SUBMIT APPLICATIONS TO THE ENVIRONMENTAL PROTECTION AGENCY FOR BROWNFIELDS ASSESSMENT GRANT ON BEHALF OF THE CITY OF ASHEVILLE

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Summary: The consideration of a resolution authorizing Land of Sky Regional Council (LOSRC) to submit applications to the Environmental Protection Agency for a Brownfields Assessment Grant on behalf of the City of Asheville.

Assistance with environmental assessments helps potential investors overcome barriers to brownfield redevelopment. The City of Asheville does not have staff that hold expertise in managing brownfields assessments, however the City has stated strategic goals that would support adopting such a program, for example: the growth, development, and land use goal "promote strategies that encourage sustainable, high density, infill growth"; the economic development goals to "pursue riverfront redevelopment" and to "take a leadership role in intergovernmental relations to support regional economic development". Staff has ascertained that LOSRC has a proven track record in applying for and managing a brownfields assessment program, and that the costs of utilizing their services would be considerable less to the taxpayer than redirecting resources internally or requesting additional funding for a new program.

Application fees to LOSRC for one grant would be $3500; for both grants $5000. While there is an additional cost to administer the program if the application is successful, it is eligible to be paid for by the grant.

The River District Design Review Committee heard this proposal at their June 27, 2007 meeting and supports the application.

Council's Planning and Economic Development committee reviewed this item at their July 11, 2007, meeting and asked that it be placed on the next available formal agenda.

Pros:

- City promotes sustainable infill development
- City promotes safety of citizens through potential clean up of hazardous materials in the River District
- City will expand its toolbox of incentives for sustainable development without having to redirect current or direct substantial new resources.

Cons:

- City will incur initial cost of $3500 - $5000
- External management of a City of Asheville initiative.

Staff recommends City Council approve a resolution authorizing Land of Sky Regional Council to submit applications to the Environmental Protection Agency for a Brownfields Assessment Grant on behalf of the City of Asheville.

Ms. Kate O'Hara, Director of the Brownfield Assessment Program with the Land of Sky Regional Council, responded to various questions/comments from Councilman Mumpower.

Councilman Mumpower could not support the resolution in that felt that this is (1) not particularly careful with other people's money; and (2) it is a redundant program.

Councilwoman Cape said that she has seen the brownfields initiative as a positive force in other cities to help areas that have been stagnant because of the perceived problems.

Councilwoman Cape moved for the adoption of Resolution No. 07-147. This motion was seconded by Councilman Freeborn and carried on a 6-1 vote, with Councilman Mumpower voting "no."

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III. PRESENTATIONS & REPORTS:

A. ASHEVILLE TREE COMMISSION ANNUAL REPORT

Mr. Bill Jones, Chairman of the Asheville Tree Commission, recognized the Tree Commission members. He said the mission of the Commission is to support the vitality of the City's trees through professional arboricultural practices and conscientious stewardship.

Key accomplishments include (1) Commission represented (by member) on the Technical Review Committee; (2) Pack Square Conservancy Board: "make gardening and horticulture come alive in the park;" (3) Subcommittee/Planning staff re: Unified Development Ordinance landscape alternatives (changes adopted May 22, 2007); (4) Developed two lists - (a) recommended species (for planting); and (b) invasive plants (to avoid); (5) Tree Commission: alternative board for landscaping alternatives; (6) Enforce Chapter 20 (Trees) regarding pruning and overall tree health; and (7) Citizen Response Committee - reviews tree removals; consists of three foresters/arborists.

The Citizen Response Committee's duties include (1) review select trees located in rights-of-way; (2) evaluate trees which may adversely affect persons or property; (3) recommend action(s) to the Tree Commission for approval; and (4) provide technical advice to citizens.

Their 2007-08 goals include (1) Alternate Compliance Committee (convene in August, 2007); (2) Technical Review Committee activities; (3) SACEE partnerships; and (4) Chapter 20 (Trees) enforcement.

He then explained how important proactive tree management is.

Mr. Jones responded to various questions/comments from Council, some being, but are not limited to: how do we go about staging for tree life cycles in our community; what kinds of things would the Tree Commission like to propose for our community; should there be stronger rules prohibiting invasive species; would it be in our best interest to have strict rules on the cutting of trees even on residential properties; and how can we preserve our overall tree canopy.

There was a brief discussion about tasking the Tree Commission with the responsibility of reviewing air right requests, prior to Council consideration, from a standpoint of how they affect landscaping below the balconies. Mayor Bellamy asked that whatever is decided, that Council not make a motion until we have a little more information on what our intended purpose is and that we be specific in what we want.

Mayor Bellamy would like the Tree Commission to look at (1) getting involved in the update of the Greenway Master Plan; and (2) partnering with Warren Wilson College.

On behalf of City Council, Mayor Bellamy thanked Mr. Jones and the entire Tree Commission for their hard work on this Commission.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF PROPERTY LOCATED AT 919 HAYWOOD ROAD, ALONG WITH A DEVELOPMENT MASTER PLAN, FROM INSTITUTIONAL DISTRICT, RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT AND RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO URBAN PLACE DISTRICT/CONDITIONAL ZONING FOR A MIXED USE DEVELOPMENT AND MODIFICATIONS OF THE UNIFIED DEVELOPMENT ORDINANCE STANDARDS FOR LANDSCAPING, BUILDING SETBACKS AND SIDEWALK WIDTHS

ORDINANCE NO. 3511 - ORDINANCE TO CONDITIONALLY ZONE PROPERTY LOCATED AT 919 HAYWOOD ROAD, ALONG WITH A DEVELOPMENT MASTER PLAN, FROM INSTITUTIONAL DISTRICT, RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT AND RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO URBAN PLACE DISTRICT/CONDITIONAL ZONING FOR A MIXED USE DEVELOPMENT AND MODIFICATIONS OF THE UNIFIED DEVELOPMENT ORDINANCE STANDARDS FOR LANDSCAPING, BUILDING SETBACKS AND SIDEWALK WIDTHS

Mayor Bellamy opened the public hearing at 5:50 p.m.

Urban Planner Alan Glines said that this is the consideration of an ordinance to conditionally zone property located at 919 Haywood Road, along with a development master plan, from Institutional District, RM-8 Residential Multi-Family Medium Density District and RS-8 Residential Single-Family High Density District to Urban Place District/Conditional Zoning for a mixed use development and modifications of the Unified Development Ordinance (UDO) for landscaping, building setbacks and sidewalk widths. This public hearing was advertised on August 3 and 10, 2007.

The proposed project is located at 919 Haywood Road on 4 parcels totaling 2.93 acres. The site is the former home for St Joan of Arc Roman Catholic Church. The church relocated their facility further out in west Asheville. The site has frontage on three streets and covers the entire end of the block facing Haywood Road. Mitchell Avenue and Blue Ridge Avenues are secondary frontages for the development and have a residential character. The current proposal is a conditional zoning to Urban Place District following the master plan that has been revised from an original plan approved for the site in 2006. That plan proved to be too costly to construct as proposed so the plan was modified. During the original planning process the developer held a charette to solicit resident and community input on the design and proposal. Many people were appreciative of that process because it provided a format for input at the design stage. The current plan is a scaled down version but similar to the original proposal in focus and access.

The plan proposes 56 residential units (19 units per acre) and about 10,000 square feet of commercial space. Three mixed-use buildings will face and be accessed from Haywood Road. These are the largest structures in the proposal. A pair of driveways from Mitchell and Blue Ridge Avenues provides vehicular access to the site. The bulk of the structures located behind Haywood Road are residential in scale and design. No structure is taller than three stories. The residential structures are made up of duplexes and triplexes that are located over garage parking. Four single family units will be placed at the rear of the site with two units on Mitchell Avenue and two along Blue Ridge Avenue. These single family style units will help make the project compatible with the character of the neighborhood. As a feature of the plan, the residential structures become smaller and reduced in scale the greater the distance from Haywood Road. All parking for the project will be provided within the site in a central parking area and scattered behind and under structures in parking garages. Business patrons will be able to park in spaces behind the mixed-use buildings.

Existing landscaping on the project site includes many mature trees. The development team made an effort to place structures in a way that will allow some of the trees to be maintained. When the church acquired the neighboring properties the existing houses were removed. At least one of the homes was burned. Trees surrounding this home were damaged by the blaze. In another section of the site native Canadian hemlock trees are heavily damaged by the parasitic hemlock woolly adelgid and all of them will have to be removed. The design team has hired a certified arborist to analyze the trees and advise on which ones have the best chance to remain healthy or strengthen. In a few places healthy trees will be removed to provide space for structures and infrastructure. A site survey will be prepared and reviewed in the interest of preserving as many trees as possible.

The project is seeking three modifications from City Council for requirements found in the landscape ordinance and in the Urban Place District:

- Property line buffer to provide a reduced buffer without a required fence along the north side of the development. The proposed landscape buffer would be fifteen feet instead of a 20 foot buffer and a 30 foot buffer adjacent to the RM-8 and RS-8 properties respectively. The project is seeking a waiver of the standard fence requirement with a 50% buffer width reduction referenced in the landscape ordinance. This modification comes at the request of the neighborhood who didn't want to 'wall' the project from the neighborhood and who felt that the fence would do that. The buffer will be well planted and the existing evergreen trees will remain. A similar request was approved during the original project review in 2006.
- Sidewalk width along Mitchell Avenue and Blue Ridge Avenues from Urban Place standards of 10' and instead provide sidewalks narrower (4-5 feet) in order to preserve existing trees and rock work etc. The intent of the wider sidewalk requirement is to support mixed-use projects that are the focus of the Urban Place district. Both Mitchell Avenue and Blue Ridge Avenue have a residential character. The sidewalk modifications will be in keeping with the sidewalk widths in residential areas. The sidewalks will follow the City standard of a 5' sidewalk with a 5' grass strip in some places and in others will be a 5' sidewalk placed behind the curb. The modification will allow the designers to avoid damage to existing trees and an existing rock wall along Blue Ridge Avenue. City Council approved flexibility with regard to the sidewalks when the project was approved in 2006.
- Setbacks for Buildings 4, 7 and 8 to preserve existing vegetation (setback proposed up to 45 feet) as shown on the master plan. The Urban Place District allows a maximum setback of fifteen feet from the right-of-way line. The description of the setbacks provides some flexibility and recommends greater setback if needed to preserve existing trees. The setback request is for residential buildings fronting on the Mitchell and Blue Ridge Avenue side streets. The setbacks will allow some of the trees near the street to be protected. The setback for building 7 would be 35 feet and buildings 4 and 8 would be 45 feet. The original plan was approved with a similar setback and layout.

The project was also approved for variances from design and operational standards by the Planning and Zoning Commission at their meeting on August 1, 2007. The Planning and Zoning Commission is able to grant variances to design and operational standards:

- Orientation of buildings towards the primary access corridor for buildings 5, 6,9,10, 11, 12, 13, 15, 17, 18, 20 which are arranged within the project area around green spaces and the access driveway and will not face the surrounding streets with an official front. Orientation for these structures is shown on the master plan and was recommended for approval by the Planning and Zoning Commission.
- Window requirements will need variances for ground floor windows for the residential structures. The requirement in the Urban Place District, for window openings at the ground floor level is 40 %. This standard is most suitable for mixed-use buildings in a development. Residential buildings are not as well suited for this openings requirement although the code does not provide any distinction between the types of uses. For the ground level windows, the Planning and Zoning Commission voted to approve the window openings as proposed by the developer recognizing the residential use of the structure The buildings will have ground level windows at 16% for type 'B' structures, 27% for type 'C' structures and 22 % for type 'D' structures.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   The project will meet City and State code requirements. The Technical Review Committee will have a final detailed review of the project should the master plan be approved.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
   The larger buildings will be placed with frontage along Haywood Road. Other structures are placed within the site in a way that will preserve existing vegetation. A setback variance is being requested for three structures in order to preserve existing trees.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
   Reinvestment at this site is expected to be a positive catalyst for this portion of Haywood Road. The development is not expected to injure the value of adjoining property.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
   The largest buildings in the development will front along Haywood Road, a commercial corridor. The building scale and massing for the rest of the development is reduced to provide a residential character as it interfaces with the residential use along Mitchell and Blue Ridge Avenues. The tallest structures are three stories. The project is in harmony with the scale, bulk, coverage and density of the area.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
   The comprehensive plan encourages the redevelopment of infill sites. Mixed-use higher density projects located on commercial corridors are appropriate because of their efficient use of land, support for transit and pedestrian connectivity and because they provide a variety of housing options in the community. This development pattern is supported by plans and policies adopted by the City.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
   The site has sufficient infrastructure to support this proposal. Utilities are present in the vicinity. A fire and police station is located along Haywood Road. The Asheville Transit Route One passes in front of the site along Haywood Road.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
   The project is not expected to create traffic congestion or create a traffic hazard. The project was reviewed by the City Traffic Engineer and with minor modification will meet City traffic standards.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

This conditional zoning request was recommended for approval by a 6-0 vote by the Planning and Zoning Commission. No one, besides the development team, spoke at the hearing.

Pros

- Property at a key location is being redeveloped
- Neighbors and the community were involved in the planning process
- The project is expected to be a positive catalyst for this area of Haywood Road

Cons

- Some additional traffic may be added to neighborhood streets.
- The proposed development will be more intense than the prior church use.

The Planning and Zoning Commission recommended approval of the conditional zoning request with a vote of 6-0. They also approved the design and operational variances requested for the development. Staff concurs with these recommendations.

Mr. Tony Hauser, Ambient Design Group, reviewed with Council the Village at Haywood. He reviewed the site, the mixed uses on the site, the variety of housing, open spaces, pedestrian connectivity and their community input sessions.

Mayor Bellamy closed the public hearing at 6:01 p.m.

In response to Councilman Freeborn, Mr. Glines reviewed the buffering in the rear.

Mr. Glines responded to Mayor Bellamy when she asked how this plan differs from the original plan approved by Council; will the interior streets become City streets; request to have trash receptacles be placed on Haywood Road and in the interior of the development; and what are the plans for stormwater control during construction.

In response to Councilman Freeborn, Mr. Hauser said the price points for the residential units are $199,000 to $299,000.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3511 to conditionally zone property located at 919 Haywood Road from Institutional District, RM-8 Residential Multi-Family Medium Density District and RS-8 Residential Single-Family High Density District to Urban Place District/Conditional Zoning for a mixed use development and the site master plan and modifications as presented, subject to the following standard conditions as well: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; and (5) This project will undergo final review by the TRC prior to issuance of any required permits. This motion was seconded by Councilwoman Cape and carried unanimously.

ORDINANCE BOOK NO. 24 - PAGE 100

B. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO CREATE A MIXED USE DEVELOPMENT DISTRICT

Mayor Bellamy opened the public hearing at 6:06 p.m.

Interim Planning & Development Director Shannon Tuch said that this public hearing and the public hearings to (1) consider an amendment to the Unified Development Ordinance to provide for development standards for parking garages and (2) consider rezoning properties located on or near Merrimon Avenue are related and that she would present all three issues together, but noted that they all three would need to be voted on separately.

Ms. Tuch said that this is the consideration of an ordinance to amend the Unified Development Ordinance (UDO) to create a mixed use development district. This public hearing was advertised on August 3 and 10, 2007.

From Staff Report: Staff has been working on a way to simultaneously consolidate some of our "urban" zoning districts while implementing corridor plans like the Merrimon Avenue and River Redevelopment/Wilma Dykeman plans.

The ordinance has been modified to reflect the direction given to staff at the Planning and Zoning Commission's June 6, 2007, meeting. The Commission also recommended scheduling this item with a new parking garage standards amendment considered by the Commission in July.

Pros:

- Provides a way to consolidate several urban districts while allowing flexibility for specific circumstances.
- Promotes City goals of code streamlining, mixed use development, green building, and tax base enhancement.
- Helps implement Merrimon Avenue zoning study.

Con:

- Application to various corridors will result in changes to existing land use patterns (possibly a pro).

On June 6, 2007, the Planning and Zoning Commission voted unanimously (6-0) to recommend approval. Staff recommends City Council approve an ordinance amending Chapter 7 of the Code of Ordinances of the City of Asheville to create a mixed use development district.

C. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO ESTABLISH DEVELOPMENT STANDARDS FOR PARKING GARAGES

This public hearing was held in conjunction with Public Hearing B and D.

Ms. Tuch said that this is the consideration of an ordinance to amend the Unified Development Ordinance (UDO) to establish development standards for parking garages. This public hearing was advertised on August 3 and 10, 2007.

From Staff Report: This code amendment provides for development standards for parking garages.

At the June 6, 2007, Planning and Zoning Commission meeting, direction was given to staff to prepare a code amendment for parking garage development standards. This ordinance results from that direction and includes the following special provisions:

- Screening and landscaping standards
- Façade requirements
- Ground-floor use requirements

- Lighting standards

The amendment has been routed to CAN, CREIA, and CIBO, among others, for review and comment.

Pros:

- Ensures higher compatibility with adjacent residential and commercial properties; reduces potential for land-use conflict.
- Is consistent with parking garage standards in other districts (CBD).

Cons:

- Requires more detailed review.
- Adds costs to development (although additional costs are not felt to be significant).

On July 12, 2007, the Planning and Zoning Commission recommended unanimous approval of the proposed code amendment by a vote of 4-0. Staff recommends City Council approve an ordinance amending the UDO to establish development standards for parking garages.

D. PUBLIC HEARING TO CONSIDER THE REZONING PROPERTIES LOCATED ON OR NEAR MERRIMON AVENUE FROM COMMUNITY BUSINESS I DISTRICT, COMMUNITY BUSINESS II DISTRICT, COMMUNITY BUSINESS I DISTRICT/CONDITIONAL ZONING, COMMUNITY BUSINESS II DISTRICT/CONDITIONAL ZONING, NEIGHBORHOOD CORRIDOR DISTRICT/CONDITIONAL ZONING AND HIGHWAY BUSINESS DISTRICT/CONDITIONAL ZONING TO MIXED USE DISTRICT

This public hearing was held in conjunction with Public Hearing B and C.

Ms. Tuch said that this is the consideration of an ordinance rezone properties located on or near Merrimon Avenue from Community Business I District, Community Business II District, Community Business I District/Conditional Zoning, Community Business II District/Conditional Zoning, Neighborhood Corridor District/Conditional Zoning and Highway Business District/Conditional Zoning to Mixed Use District. This public hearing was advertised on August 3 and 10, 2007.

From Staff Report: A 2006 survey of citizens and property owners indicated a general desire for Merrimon to become a mixed use corridor, with pedestrian-friendly and transit-supportive development and with businesses that are used by the surrounding neighborhoods as well as some specialty/designation retail of relatively small scale. Additionally, there was a preference for more "traditionally-designed" buildings oriented to the Merrimon Avenue. Two groups that have worked with staff on this zoning study – the Merrimon Avenue Study Group and the Merrimon Avenue Business Group – prepared a plan that illustrated their vision for the corridor that is consistent with the above goals from the survey.

At the Planning and Zoning Commission's direction, staff has worked with these groups to prepare a zoning district that allows customization of certain requirements for particular areas. This proposed zoning district, the Mixed Use District (MXD), is proposed to replace the commercial zoning designations of CB-I, CB-II, and HB along the Merrimon corridor.

Application of the MXD zoning district will create numerous nonconformities for existing developments. However, most of the existing developments are currently nonconforming under their current CB-I and CB-II zoning since these districts require parking to be to the side or in front of the buildings (just as the MXD district would require). Nonconforming structures are grandfathered and their continued use is allowed.

The advantages of the MXD zoning over the existing zoning include:

- MXD will allow greater density and development intensity than CB-I.
- MXD will allow greater density and development intensity than CB-II using the Community Incentive Table.
- CB-I encourages the most intensive traffic generators – convenience store and gas stations.
- CB-II and HB encourage "box" type development that are also high traffic generators and attract regional customers to Merrimon Avenue.
- MXD promotes a more efficient land use pattern that supports multi-modal transportation instead of just automobile transportation.

The Planning & Zoning Commission considered this request at their June 6, 2007, public hearing. After a period of public comment and deliberation, the Commission voted to unanimously approve the rezoning (6-0) with one change and a number of exclusions. Specifically, the Commission chose to:

- Change the zoning for properties located at 11 & 17 Larchmont from CB-II to RS-8.
- Exclude the HB zoned property commonly referred to as the Deal Buick property.
- Exclude the cluster of HB zoned properties further north which includes: Stein Mart, Sav-Mor, Eckerd's, the Fresh Market shopping center, Ingles, and other smaller miscellaneous parcels.
- Exclude the CB-II property located at 825 & 841 Merrimon Ave., commonly referred to as the Walgreen's property along with the adjacent strip center.

Staff can fully support the request to change the zoning of the properties located on Larchmont which originated from the owners who described the properties as being residential in character and who expressed a desire that they remain that way. Similarly, staff also supports the exclusion of the HB zoned properties recognizing that the properties are well suited for future site specific rezonings such as the Urban Village plans that are currently being developed for the Deal Buick site.

Lastly, staff can also support the exclusion of the identified CB-II zoned Walgreen's property since its recent redevelopment has rendered it an unlikely candidate for new future development. The adjacent strip center is more likely to be redeveloped; however, the parking layout is tied to the existing parking condition at Walgreen's and it is difficult to consider redevelopment in a substantially different form than what currently exists. It is important to note however that the Walgreen's and adjacent strip center property are currently non-conforming in layout and that both the CB-II and MXD zoning would require new buildings to be located close to the street with parking to the side or rear. With respect to parking, MXD zoning with the Merrimon specific standards is more flexible than CB-II in that it allows some parking to be located in front of the building while the current CB-II standards do not; however, MXD would require other standards, such as a two story minimum and other fenestration requirements that CB-II would not require. In summary, the cost-benefit of including or excluding these properties is relatively equal.

Pros:

- Survey goals are achieved.
- Greater development intensity provides an incentive for property owners.
- Since most properties are nonconforming currently, there is not a significant change in conforming/nonconforming status.
- The zoning requirements are "personalized" for Merrimon Avenue.

Cons:

- Some new non-conformities would be created.
- Development/redevelopment costs would likely be increased due to higher development standards.

Staff concurs with the Planning & Zoning Commission and supports the rezoning of CB-I, CB-II, and NCD (CZ) properties along Merrimon Avenue to MXD.

Council may choose to consider whether the HB zoned properties and identified CB-II zoned properties should be included in the rezoning request.

Using a PowerPoint presentation, Ms. Tuch began presenting all three public hearings together. She reviewed the survey results regarding the Merrimon Avenue Corridor. She explained there are three primary existing districts on Merrimon Avenue - Community Business I District, Community Business II District and Highway Business District. She explained the proposed standards of the MXD. She said this has been a cooperative effort of the Merrimon Avenue Corridor Study Group and the Merrimon Avenue Business Group and briefly reviewed their group recommendations.

She said that staff's conclusion is that MXD was appropriate for Merrimon Avenue, addressing the concerns that the MSD will create numerous nonconformities, development incentives will be lost, and traffic congestion.

Staff requested Council consider tailoring the MXD to Merrimon Avenue and zone most areas to MXD. Largely as a result of the input provided to staff from the study groups, we created a separate set of standards that would apply only to the Merrimon Avenue corridor.

Staff's recommendation is to zone Community Business I and Community Business II and Neighborhood Corridor District to MXD (excluding the Walgreen's site and the property next to the Walgreen's site to the south - Blockbuster strip center); and exclude the Highway Business District properties (Deal Buick site, Stein-Mart/Fresh Market sites; and Ingles site) but promote Urban Village redevelopment.

She explained the reasons behind the suggested exclusions (1) the reason for excluding the Walgreen's site is that it has been recently developed and it's unlikely that it will be redeveloped anytime soon; (2) the reason for excluding the Deal Buick site is that the developer is working on creating Urban Village plans and a significant amount of investment has been made on the developer's behalf to develop the Urban Village site - we feel pretty comfortable knowing that we can expect a redevelopment plan for that site in the future; (3) the Stein-Mart/Fresh Market sites are very appropriate for Urban Village - it is in an under-leased state currently and we think that would be a prime for redevelopment in the future; and (4) at the Ingles site, there is less potential for that to turn into an Urban Village in the future, but it is a business that heavily supports the north Asheville community and we do think it is a valuable part of the corridor.

Mr. Albert Sneed, attorney representing the owners of the Deal Buick site, requested their site remain zoned Highway Business District in that they are pursuing an Urban Village designation.

A property owner who adjoins Ingles was uncertain about the recommendation concerning his property.

Mr. Jim Groce, property owner of Walgreen's and Blockbuster retail strip center, requested his property remain zoned Community Business II District.

Mr. Mike Lewis, member of the Merrimon Avenue Corridor Study Group, explained that they have worked on this corridor for 22 months and hoped that Council would approve zoning the entire Merrimon Avenue corridor to MXD.

Ms. Hedy Fischer, member of the Merrimon Avenue Corridor Study Group, pointed out that the Larchmont properties were not mentioned but they should be rezoned as residential. She explained how the MXD is appropriate for the entire corridor without exclusions. She felt that if the Deal Buick development fails (or any of the properties suggested for exclusion) it would be better to have the zoning be MXD and not the Highway Business District. She felt that if the owners of the Deal Buick property are going to have to have their property rezoned from Highway Business District to Urban Village District that they can just as well ask that their property be rezoned from MXD to Urban Village District.

Mr. Joe Minicozzi, President of the Coalition of Asheville Neighborhoods, felt that MXD is the right use for the entire corridor without exclusions.

Mr. Robbie Sweetser, Merrimon Avenue resident, urged Council to rezone the entire Merrimon Avenue corridor MXD with no exclusions (except for the Larchmont property to be rezoned to residential).

Ms. Heather Rayburn, President of the Five Points Neighborhood Association, felt the entire Merrimon Avenue corridor should be rezoned to MXD, with no exclusions.

Mr. Randy Jamison, representative of Ingles Markets, requested the Ingles property remain zoned Highway Business District and explained that they need to keep that designation in order to remodel the store in the future.

Ms. Billie Buie, member of the Merrimon Avenue Corridor Study Group, felt there needs to be some mention of street trees in the planting strips between the sidewalks.

Rev. Christopher Chiaronmonte supported exempting the Highway Business Districts.

Mr. Frank Dozier felt that the MXD is too restrictive.

Ms. Erica Allison, representing CS Merrimon Avenue Development, LLC, spoke in support of exempting the Highway Business Districts.

Ms. Susan Roderick, member of the Merrimon Avenue Corridor Study Group, pointed out that Merrimon Avenue is not a highway and the street should be consistent. She didn't think that keeping the Deal Buick site zoned Highway Business District is necessary.

A Liberty Street resident expressed concerns of what will be built on the Deal Buick site and that the spirit of the neighborhood should be respected.

At 7:02 p.m. Mayor Bellamy closed the public hearing.

Ms. Tuch responded to various questions/comments from Council, some being, but are not limited to: how can we make our product more user-friendly, i.e., a form based code; is Atlanta Bread Company a single or two-story building; were there any exclusions asked for by the two study groups; is there a value to keep Merrimon Avenue under the N.C. Dept. of Transportation control; and what was the process of the adoption of the UDO in 1997.

Discussion occurred of how the MXD would hinder Ingle's future remodeling.

Councilwoman Cape was supportive of the MXD without a lot of exemptions. She was not supportive of exempting the Deal Buick site since it would not slow their development of the

site with a rezoning request from MXD to Urban Village District. She could, however, support the existing Highway Business District for Ingles' Markets.

Councilman Davis applauded the efforts of the neighborhood study groups. He was, however, concerned that rezoning this entire corridor may be too much at one time with the number of questions still being raised by property owners. We are looking at big pieces of this and letting the small ones get away.

Councilman Mumpower felt Merrimon Avenue is a highway. He felt we are intruding on the future ability of so many people to do something useful with their property in the name of some special interest indulgence. He will not support the rezoning, but would speak in favor of the exemptions.

Discussion surrounded the Deal Buick site requested exemption.

Councilwoman Cape requested further discussion with the NC DOT regarding obtaining excess right-of-way back for development.

Mayor Bellamy noted that no one has said that this planning process was mandatory and at the end, the recommendations put forward would automatically be accepted by the community or Council. Tonight, she has not heard any property owner who owns property in the impacted study area express support for it.

Ms. Tuch responded to Mayor Bellamy when she asked if the building that collapsed on Merrimon Avenue will be the pattern of buildings we will see on Merrimon Avenue and/or could we get another Staples building.

In response to Mayor Bellamy, Ms. Tuch said the primary goal of the study on Merrimon Avenue is to promote a smart pattern of development - to encourage multi-modal access, to encourage density where is hasn't been encouraged before, to provide incentives for that kind of development, and also to mix the uses so that you can have residential in a retail area close to employment centers in order to be able to reduce the reliance on cars or other transportation.

Mayor Bellamy said that if that is the goal, she didn't believe we achieved it. She believed that the 919 Haywood Road development achieves that goal more than what is presented tonight. She does think the MXD is a step in the right direction. Councilwoman Cape's idea of a form based code would be perfect for what we want here to exhibit exactly what we want in this corridor. The Ingles representative has a valid point. The reason we don't have the Charlotte Street Ingles is because we changed the rules after the fire occurred and they could not rebuild in the way the neighborhood residents wanted to see a new Ingles in their community. She thinks we missed on what we are trying to accomplish. She suggested sending this back to the Planning & Zoning Commission or giving Council some more time to really visually look at what we are trying to accomplish. She doesn't think that people want more of the Edney building or another Staples. We might end up creating a wind tunnel on Merrimon Avenue and changing the whole footprint and that wouldn't be what we want. She believed that if we have the Atlanta Bread Company model out Merrimon on different levels, that model would be more of a feel people could live with. She apologized to the study groups and acknowledged their 22 months of work, however, she thinks that the best opportunity that we have is to really take our time, because she doesn't think that what we have on the table tonight will really get the desired affect that the community wants to live with for 50 to 100 years on Merrimon Avenue. She thinks we are creating a monster. She thinks it will come back to bite us not only in the future but in the next couple of years because we cannot visually determine what we want. If we have the people who own the property, who are represented in this room, and not one of them has supported anything that has been presented as far as the rezoning, there is a problem. Although she appreciates public input, the property owners (who the study group is asking to comply) are the ones who are impacted, and if they don't like it, it's very hard for them to comply. She thinks what

we are getting is not exactly our intended outcome. She thinks we need to look at the process and maybe see some drawings on the highest and best use of the properties and look at the buffering requirements to see how they fit in. But what we have on the table tonight, she cannot support. She can support the creation of a MXD and the development standards for parking garages, but not the rezoning of properties on Merrimon Avenue to MXD.

Councilwoman Cape said that what she likes about the MXD is that it's giving that flexibility to property owners that will allow more of the Atlanta Bread Company models and not end up with the Edney building or Staples. She feels that the property owners aren't upset or they would be here. People often don't come out unless they are upset. We are trying to give a better product than we have now.

Councilwoman Cape moved to amend the UDO to create a MXD. This motion was seconded by Vice-Mayor Jones.

Councilman Freeborn was concerned that we are not allowing enough square footage for grocery stores and asked Councilwoman Cape if she would accept a friendly amendment to increase the 24,000 gross sq. ft. area to 48,000 gross sq. ft. Councilwoman Cape accepted the friendly amendment and was open for staff to give a recommendation on this.

Councilman Newman preferred a little more time to think about the comments and to talk to others about their ideas. Since Merrimon Avenue is a big corridor and there are a lot of properties involved, he again requested a little more time to review this matter.

Councilman Davis agreed with Councilman Newman.

Councilwoman Cape withdrew her motion if a date can be set to continue this matter.

Councilman Newman moved to postpone the three issues until September 18, 2007 (with Mayor Bellamy's concurrence). This motion was seconded by Councilwoman Cape, with Councilman Mumpower voting "no."

Mayor Bellamy noted that on the August 28, 2007, agenda, there will be updates on Greenlife, Staples and UDO amendments. At that meeting, she requested that staff provide Council with general information on a form based code along with some examples of form based codes.

There was a brief discussion about considering a form based code for Asheville.

At 8:03 p.m., Mayor Bellamy announced a short break.

V. UNFINISHED BUSINESS:

A. RESOLUTION NO. 07-152 - RESOLUTION TO RESCIND RESOLUTION NO. 07-144 AND AUTHORIZE STAFF TO SOLICIT PROPOSALS FROM QUALIFIED PROFESSIONALS TO WORK WITH THE N.C. DEPT. OF TRANSPORTATION TO EVALUATE THE ASHEVILLE DESIGN CENTER'S PROPOSED I-26 ALIGNMENT

Director of Transportation and Engineering Cathy Ball said that this is the consideration of a resolution to rescind Resolution No. 07-144 and authorize staff to solicit proposals from qualified professionals to work with the N.C. Dept. of Transportation (NCDOT) to evaluate the Asheville Design Center's proposed I-26 alignment. City staff is also requested Council appoint a Technical Review Committee consisting of six professionals in the area of Engineering, Architecture and/or Planning. This group will consist of two representatives from the County, two

from the City and two from the Asheville Design Center. Staff recommends Council appoint herself and the City's Traffic Engineer Ken Putnam.

On July 24, 2007, City Council adopted Resolution 07-144 authorizing the City Manager to contract with the Asheville Design Center in the amount of $70,000 to perform an engineering analysis of the alternative design for I-26 proposed by the Asheville Design Center. Since that time, Buncombe County has agreed to pay $35,000 to assist in the cost of the study, provided the City contracts to have the work completed.

The consultant would evaluate the methodology the NCDOT used in their review of the Asheville Design Center's alignment. The consultant would meet with the NCDOT and review the criteria used to make its recommendation develop options to overcome the hurdles that NCDOT outlined their report. The consultant would then provide City Council with a report detailing their findings.

Pros:

- Assist the City in deciding how to move forward with the Design Center's proposed alignment.
- Buncombe County will be paying $35,000 toward the study.
- A technical review committee will be established to oversee the engineering process.

Con:

- The process will take longer than contracting with the Asheville Design Center because staff will need contract authorization from Council prior to signing an agreement with the successful firm.

Staff recommends that City Council rescind Resolution 07-144 and authorize staff to solicit proposals from qualified professional to work with the NCDOT to evaluate the Asheville Design Center's proposed alignment. Staff also requests that Council appoint two representatives (City Director of Traffic and Engineering Cathy Ball and City Traffic Engineer Ken Putnam) to the Technical Review Committee.

In response to Councilwoman Cape, Mr. Joe Minicozzi, President of the Coalition of Asheville Neighborhoods, said that they are supportive of this change.

Councilman Mumpower is apprehensive about anything that alters the potential for further delay. Even though he liked the alternate from the Asheville Design Center, his concern is that they got involved late in the progress, thus further delay.

Councilman Newman was glad to be on a city council that supports the tremendous planning effort that the Asheville Design Center has provided leadership on in the community. He was pleased that Buncombe County and that our state delegation has all come together recognizing the huge potential benefits of this design to the community in terms of growth management and economic development.

In response to Councilman Davis, Ms. Ball said that she anticipated at least six weeks before we actually are able to get the contracts underway because we will go out with the Request for Proposals, receive them, recommend awarding them and then come back to City Council to actually award the contract. Then from the time the contract is signed, she anticipated the study taking 90 days.

Mayor Bellamy publicly thanked the Buncombe County Commissioners for their willingness to pay half the fee (total of $70,000) and for their commitment to see this process through.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Freeborn moved to adopt Resolution No. 07-152 to (1) rescind Resolution No. 07-144 and authorize staff to solicit proposals from qualified professionals to work with the NCDOT to evaluate the Asheville Design Center's proposed I-26 alignment; and (2) appoint a Technical Review Committee consisting of six professionals in the area of Engineering, Architecture and/or Planning, with said group consisting of two representatives from the County, two from the City and two from the Asheville Design Center. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 30 - PAGE 399

B. SECOND READING OF ORDINANCE NO. 3506 - AN ORDINANCE APPROVING A MASTER SIGN PACKAGE FOR PHASE II OF BILTMORE PARK TOWN SQUARE

Mayor Bellamy said that this public hearing was held on July 24, 2007, and needed to come back to City Council for a second vote due to the vote.

Councilman Davis felt the Master Sign package was good and regretted that we are killing the creativity of the stand alone sign.

Councilman Mumpower felt we are creating liberties that we are not giving smaller less wealthy businesses and still exerting control.

Councilwoman Cape was supportive of the Master Sign package to have signs within the context of their own buildings. However, this is a sign on a highway in a community that doesn't really like billboards and this sign is as big as a billboard.

Councilwoman Cape moved for the adoption of the second and final reading of Ordinance No. 3506. This motion was seconded by Vice-Mayor Jones and carried on a 4-3 vote, with Mayor Bellamy, Councilman Davis and Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 24 - PAGE 84

C. RESOLUTION NO. 07-153 - RESOLUTION TERMINATING THE UPSET BID PROCESS FOR THE GRANT OF AIR RIGHTS ADJACENT TO 82 PATTON AVENUE AND AUTHORIZING THE COMMENCEMENT OF A MODIFIED PROCESS

City Attorney Oast said that this is the consideration of a resolution terminating the upset bid process for the grant of air rights adjacent to 82 Patton Avenue and authorizing the commencement of a modified process.

On April 10, 2007, Council adopted Resolution No. 07-83, authorizing the sale of air rights over the right-of-way adjacent to 82 Patton Avenue, utilizing the upset bid process set out in N.C.G.S. 160A-269. The initial offer that Council received for this air space was submitted by the developers who are renovating the old First Union Building, and was intended to allow for the construction of balconies on the front of the building that would project over the right-of-way.

There has been a bidding war between the developers who want to be able to construct their balconies as planned and the people who are bidding against them, who are concerned about the potential for this practice to take out light from the street trees and street level vegetation.

This potential sale was not made conditional on balconies actually being constructed. Further review of the applicable law indicates that attaching such a condition to the grant of air rights is a more appropriate process to use. This will require that Council terminate the process currently underway, and authorize staff to start it over again upon receipt of a qualifying offer.

Pros:
- More closely follows intent of statute
- Allows City more control of development within airspace
- Allows for conditions

Cons:
- Requires (for this case) a restart of the process
- Some advertising expense will be lost

He believes we can address both the developers' and the other party's concerns by requiring that whatever permanent improvement is built on the side of the building comply with the plan that has been approved by, in this case, the Downtown Commission, and also that the plan be reviewed by the Tree Commission to ensure that the street level vegetation is not compromised. By terminating the current process, we could end the bidding war and have the ability to impose those conditions on the developers, assuming we receive a qualified offer.

Adoption of the resolution terminating the current process, rejecting all bids, and directing staff to facilitate a process where construction of permanent structure is a condition of the sale, is recommended.

Ms. Elaine Lite, representative of PARC (People Advocating Real Conservancy) said when air rights are sold the City is paid a token sum with developers gaining valuable rights they can re-sell for hundreds of thousands of dollars. Often the opportunity to plant street trees is lost and the results are sometimes unsightly. In an effort to bring this issue to the public, PARC began counter-bidding for the air rights at 82 Patton Avenue. She explained that their issue is not with the developer but with the City granting air rights and the small amount originally offered. She applauded the developers for renovating this building, but when they are spending over $4 Million and we charge a little over $3,000 for air rights, something is wrong. She feels that adoption of the resolution will eliminate the lawful process and result in a give-away by the City thereby removing the opportunity for additional revenue and cluttering our narrow City streets with overhanging structures.

Mr. Chuck Tessier, representing Urban Capital LLC (developer), said that they bought the building in November of 2005 and through 2006 they spent time doing design and taking the building through every single process of the City, including approval by the Downtown Commission. He said that the balconies, which were approved from the beginning of this process, would overhang the public right-of-way by 3.2 feet. If the balconies are not there, there would be one huge 8 story wall down to the sidewalk. He said the sidewalk on Patton Avenue is 10 feet wide and there are two street trees, neither of which would be impacted by these balconies. As to price on the balconies, we originally bid the price that was set by the City - it was 50% of the tax value of the land on which it is being encroached upon. The balconies encroach upon exactly 162 square feet of sidewalk and that sidewalk is being shared by the public and the things above it, just as you would walk under any overhang on a sidewalk.

Mr. John Rogers, co-owner of the project, explained that his goal is to give the City the most attractive, interesting and dynamic building that he can for that important area, noting that there are many encroachments onto City property, i.e., awnings, tables at restaurants, canopies, etc.

Rev. Christopher Chiaronmonte was concerned that once rules are made, they are changed at the drop of a hat.

Mr. Danny Lack pointed out that the bulk of the balconies at 21 Battery Park overhang an alley and only 1/4 of the balconies on that building actually overhang a sidewalk.

When Councilman Freeborn asked what would happen if Council didn't proceed with the staff recommendation, City Attorney Oast said that then the current process would continue. However, he felt that for the reasons noted, in the end it may be an invalid process and subject to challenge against the City and the person who won the bid (if the bid was won for not having anything built within the shaft of air). The statutes say that the air rights may be granted for the purpose of erecting a building or permanent structure. The statutes do not contemplate granting air right for the purpose of not having anything built within the shaft of air. Council also has the authority to not sell air rights at all. Regarding the cost of the air rights, Council previously instructed City staff to research the price and brought back to Council a recommendation on what staff felt the air rights should be sold for.

Throughout discussion, City Attorney Oast responded to various comments/questions from Council, some being, but are not limited to: do we have to treat the sale of air rights as real property; can we look at the square footage of all balconies combined; what if the developer were to enclose the balconies and used the enclosed square footage as office space; did Council approve the sale of the air rights at 21 Battery Park Avenue; and are the developers comfortable with what staff is proposing.

Councilman Newman questioned if we are selling the real property (air rights) for a fair value. Economic Development Director Sam Powers said that the current formula we are using is based on a factor of 20% of the per square foot land value of the property, for which the balcony projects, applied to the horizontal area over the air space. He is not a real estate expert, but based on previous appraisals, the sales comparison approach to value is a sound method to apply for estimating air rights.

Councilman Newman felt these projects should be looked at on a case by case basis, but the formula that we use should be standard.

Councilwoman Cape felt the air rights should be reviewed by the Tree Commission, prior to City Council consideration, with a standard formula for estimating air rights.

Councilman Mumpower moved to adopt Resolution No. 07-153. This motion was seconded by Councilman Davis and carried on a 6-1 vote, with Mayor Bellamy voting "no."

Mayor Bellamy did not support the motion in that she does not support the sale of air rights regardless of what process is used.

RESOLUTION BOOK NO. 30 - PAGE 400

Councilman Freeborn moved to direct City staff to work with community members and other parties to develop a process which takes into account development and community concerns on air rights and that the process go through the Technical Review Committee, the Downtown Commission and the Tree Commission. This motion was seconded by Councilwoman Cape.

Interim Planning & Development Director Shannon Tuch suggested the motion be re-worded that we examine this from a technical aspect regardless of the scale of the project, because some projects do not go through the Technical Review Committee but are reviewed by individual staff members.

Councilwoman Cape suggested the Tree Commission review be similar to the Greenway Commission review of road closings, whereby Council asks them to review it and give Council their recommendation.

Councilman Freeborn re-worded his motion for staff to work with the community to bring back a process by which the sale of air rights is reviewed by the Tree Commission, the Downtown Commission and receives review by the City's technical staff. This motion was seconded by Councilman Newman.

Councilman Newman suggested a language clarification of the motion since not every project will be in downtown so including the Downtown Commission in the motion is not necessary. Since in most cases where air rights are involved, the projects will be large and will already have to be reviewed by several other committees. He questioned if the Tree Commission the only group that would be out of the loop or do we need to name the other commissions that will already be involved due to the size of the project.

Councilman Freeborn clarified that his intent of the motion is to look for the greatest community input on the sale of public property. All he really wants is for staff to review and bring back a proposed process. He mentioned a few commissions that might be included in that process, but they don't necessarily have to be.

Vice-Mayor Jones wondered if in addition to the standard formula used for appraising air rights if we could include some monies for legal time, economic development time, and Council time because that is real taxpayer dollars that we have incurred and will incur in the future.

Councilman Davis felt this is a good direction, but was concerned about slowing the process down again for people who are spending a lot of money to rehab an old building in downtown Asheville.

Councilwoman Cape agreed with Councilman Davis and if the developer submits a qualifying offer with a positive recommendation from the Tree Commission, she would not want to hold the project up.

Mayor Bellamy recommended that staff bring back to Council a proposed process in draft form first.

The motion made by Councilman Freeborn and seconded by Councilman Newman carried on a 6-1 vote, with Mayor Bellamy voting "no."

Upon inquiry of Councilman Davis, City Attorney Oast said that the next step for the developer will be to get a recommendation from the Tree Commission and incorporate that into whatever design they bring back to Council.

Councilman Davis, liaison to the Tree Commission, said that the Tree Commission will be meeting on Monday, August 20, 2007, and he will ask that this project be placed on their agenda.

VI. NEW BUSINESS:

A. RESOLUTION AMENDING THE ANNEXATION SERVICES PLAN FOR THE YEAR 2007 ANNEXATION AREAS

ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE BILTMORE LAKE AREA

ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE SARDIS ROAD AREA

ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE SCHENCK GATEWAY AREA

Mayor Bellamy said that staff has had to make some minor changes to the Annexation Services Plan for the Year 2007. She suggested Council postpone that issue, along with the three ordinances extending the corporate limits of the City of Asheville, until August 21, 2007, in order to give the public an opportunity to review the changes, since the amendments were not posted on Friday.

In response to Councilman Mumpower, Urban Planner Julia Cogburn said that according to the N.C. Gen. Statutes the only amendments to the Plan for Services that require a re-opening of a public hearing are those that change the statutory requirements in terms of whether or not an area qualifies and these changes are not of that nature.

When Vice-Mayor Jones questioned if the neighborhoods are aware that the actions may be postponed, Ms. Cogburn replied that she wasn't aware that they were contacted. However, since some were not planning, if at all, to attend until later in the evening, she could start contacting them immediately, if Council chooses to postpone action.

After Mayor Bellamy asked if anyone would like to comment on the issue of the continuance, Councilman Mumpower moved to postpone action on (1) the resolution amending the Annexation Services Plan for the Year 2007 annexation areas; (2) ordinance extending the corporate limits of the City of Asheville to include the Biltmore Lake area; (3) ordinance extending the corporate limits of the City of Asheville to include the Sardis Road area; and (4) ordinance extending the corporate limits of the City of Asheville to include the Schenck Gateway area until August 21, 2007. This motion was seconded by Councilman Davis and carried unanimously.

B. RESOLUTION NO. 07-154 - RESOLUTION ESTABLISHING A DATE FOR THE SPECIAL ELECTION ON THE QUESTION OF AMENDING THE CITY'S CHARTER TO PROVIDE FOR PARTISAN ELECTIONS FOR MAYOR AND CITY COUNCIL, AND SUBMITTING PROPOSED WORDING FOR BALLOT

City Attorney Oast said that this is the consideration of a resolution establishing a date for the special election on the question of amending the City's Charter to provide for partisan elections for Mayor and City Council, and submitting proposed wording for ballot.

On June 12, 2007, Council adopted Ordinance No. 3485, amending the City's charter to provide for the election for Mayor and the Council to be held on a partisan basis; since 1994, Council elections have been non-partisan. Notice of this action was published on June 16, and on July 16 (within the 30 days allowed by law), a petition was received by the City Clerk. On July 31, we received word that the petition had been determined by the Buncombe County Board of Elections to be valid.

Pursuant to N.C.G.S. 160A-103, if a valid petition is received, Council must submit the ordinance that was adopted to a vote of the people, and the special election for that vote must be held between 60 and 120 days after the petition was received. Sixty days from July 16 is September 14, and 120 days from July 16 is November 13.

The receipt of the valid petition has caused the manner of election of Council to revert to the non-partisan system that was previously in place, which means that the primary will occur on October 9, and the general election will occur on November 6. According to the Board of Elections, both of these dates are available to Council to schedule a special election on the referendum; the cost to the City for doing this (basically, the cost of printing of ballots and legal advertisements) is approximately $18,000; scheduling a special election that does not coincide with an already scheduled election is legally possible, but the estimated cost of doing so is

$40,000 to $50,000. Several Council members have individually expressed a preference for the special election on the referendum to coincide with the October primary, and that is the date that is reflected in the resolution.

On Friday, August 10, the State Board of Elections met and set a new filing period for the non-partisan election. It begins at Noon on Monday, August 13 and ends at Noon on August 20. All candidates for Asheville City Council must file during this new filing period, regardless of whether they had previously filed. Other important dates in this process (registration, absentee ballots, etc.) were established as well and that information is available from the Buncombe County Board of Elections.

Although the law does not specify who prepares the form of the question to be placed on the ballot at the special election, it appears that this task also falls to Council. The entire ordinance need not be included, but the law provides that the effect of the amendment must be described. With this in mind, he has consulted with the School of Government, and developed the form that appears on the exhibit attached to the resolution, as follows:

"Shall the ordinance (City of Asheville Ordinance No. 3458 adopted June 12, 2007) amending the City Charter of the City of Asheville to change the manner of election of the Mayor and City Council from non-partisan to partisan, be approved? ___ Yes ___ No"

If Council approves of the date for the special election, and of the wording for the question to be placed on the ballot, adoption of the resolution is recommended.

Mr. Charlie Hume, speaking on behalf of Let Asheville Vote, requested the following two things: (1) that the special election be held on the general election date of November 6 (a) based on the voter turnout numbers in 2005; (b) it will add greater legitimacy and credibility to the whole process and to the final results of the referendum; and (c) it will give them more time to educate the voters; and (2) the wording on the referendum be clear and objective. He asked Council adopt the following proposed wording for the ballot: "Shall the ordinance (City of Asheville Ordinance No. 3458 adopted by City Council June 12, 2007) amending the Asheville City Charter and changing the manner of election of the Mayor and City Council from non-partisan to partisan, be approved? ___ Yes ___ No"

Mr. Mike Fryar supporting holding the special election on the general election date of November 6, 2007.

A man spoke to Council about ample opportunities for people to vote and he didn't think that holding the special election in the general election date of November 6, 2007, excludes anyone.

Ms. Heather Raybum supporting holding the special election as soon as possible so we can deal with other pending issues of the community.

Mr. Ben Lack supported the general election date in that he felt you would receive a better cross section of voters and the wording change outlined by Mr. Hume.

Mr. Jack Saye, representing the League of Women Voters, said they do not have a position statement on this issue but would recommend to Council that the special election on this referendum be held with the general election.

Mr. Bill Lack supported the election being held on the general election date.

Ms. Christy Fryar supported the election being held on the general election date.

Councilman Mumpower moved to adopt Resolution No. 07-154 establishing a date for the special election on the question of amending the City's Charter to provide for partisan elections for Mayor and City Council for November 6, 2007. This motion was seconded by Councilman Davis.

Councilwoman Cape personally supported the special election being held in the primary because she does think the abilities to vote (register the same day of the primary and show up and vote) really aids more people than at the general election and she also believes that it is not the only issue facing the City. However, she will support the special election being held at the general election. She hoped that the people who said they want to educate the people really do educate the community about this process. An informed democracy is the only democracy worth having.

Vice-Mayor Jones spoke about some of the exciting things that have happened as a result of the Let Asheville Vote. A lot of people have gotten involved in the process and that is an important thing in our community. And, there has been some horrible things addressed at the Council members who voted in favor of the primary election. To be treated like she and others have been treated is not good and she is over being threatened and second guessed on what she felt was right. There are civic goods that exist on both sides. She cited civic goods about holding the special election at the primary. She felt it would be a tremendous benefit for people in the primary who are running to have good turnout. And it is a perfectly legitimate outcome. Whatever tools we can find to get voter turnout up is good. With all the good things that Let Asheville Vote did for a lot of people in the community, this would have been a great opportunity to mobilize a group of 5,022 people to come to the polls at the primary and help the unaffiliated candidates because up to now an unaffiliated candidate has not made it through the primary election. Whether we like it or not, there are civic goods on both sides. The thing that she hated about the process was that a lot of folks felt there is distrust in our electoral system and if she contributed to that genuine mistrust, she feels badly about that. To have distrust in our electoral system is not good for our community and even though personally she feels the right thing to do is to have the special election on the primary date, the distrust issue would be the only reason she might support holding the special election at the general election.

Mayor Bellamy announced a very brief break.

The motion made by Councilman Mumpower and seconded by Councilman Davis to hold the special election on the general election date of November 6, 2007, carried on a 6-1 vote, with Vice-Mayor Jones voting "no."

Councilman Newman moved to approve the following wording on the ballot: "Shall the ordinance (City of Asheville Ordinance No. 3458 adopted by City Council June 12, 2007) amending the Asheville City Charter and changing the manner of election of the Mayor and City Council from non-partisan to partisan, be approved? ___ Yes ___ No" This motion was seconded by Councilman Freeborn and carried unanimously.

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VII. OTHER BUSINESS:

A. WATER AGREEMENT NEGOTIATIONS

Mayor Bellamy said that Council needed to formally let the community know what has been taking place with the Water Agreement negotiations and Councilman Mumpower also requested that this matter be placed on Council's agenda. Councilman Mumpower has asked to make a PowerPoint presentation and at her direction, staff has prepared a presentation as well.

Councilman Mumpower reviewed the following PowerPoint: "A follow-up proposal to the Asheville City Council to advance our efforts to find fair solutions to our current water disagreement with the Buncombe County Commission and our Local Legislative Delegation.

A brief review of our past: (1) the process of Asheville assuming its water assets began approximately 3 years ago under former Mayor Worley and followed established protocol; (2) that action was immediately countered by a County misinformation campaign and discussion between County representatives and our local legislative delegation that led to their cooperative development of Sullivan Acts II and III; and (3) The promise of legislative action at the beginning of the negotiation process removed incentive for the County to work points of compromise - nonpublic negotiations helped conceal the authentic agendas of the negotiation process - stopping Asheville from assuming real control of her water assets.

Why have negotiations failed? (1) hidden agendas; (2) absence of public scrutiny and interest; (3) failure to uphold our word by negotiating with all three bodies in open forum; (4) focus on decoy issues such as civic centers; (5) a wish to treat Asheville differently than other cities who own their water system; and (6) power politics over responsible leadership.

What can we do going forward? (1) we should reopen negotiations in open public forum and include all three governmental bodies; (2) we should concentrate on core water issues and resist the distractions of "decoy" issues; (3) we should borrow from existing models of success by other community owned water systems; and (4) we should focus on points of compromise centered on incremental implementation that offers the hand of fairness to county residents affected by the change.

We should open negotiations with all three bodies. (1) bad stuff grows in the dark and public complacency is what turns out the lights; (2) all three bodies are involved and in control of the outcome in some form or fashion - all 3 at the table; and (3) open negotiations create more incentive for a healthy, honorable and honest process.

We should concentrate on core issues: (1) complexity prohibits progress; (2) the issue is water - and water is where we should be devoting our attentions; and (3) examples of core issues are differential water rates, annexation, service access, system maintenance, etc.

We should stop trying to reinvent the wheel: (1) 99+% of the cities in North Carolina who own their water system use the same model to manage those resources; (2) we should "box the compass" and look north (Weaverville), south (Hendersonville), east (Morganton) and west (Canton) for models for the Asheville system; and (3) it is this simple - Asheville, over time, should be treated just like other cities.

Incremental implementation is (1) treat Asheville like other cities, but use a long-term implementation plan - 15 years or more; (2) keep an eye on fairness to our neighbors and avoid heavy handed implementation; and (3) give fair consideration to City taxpayers who pay double the taxes of other County residents.

Sample "core" issues for negotiations would be: rate structure (1) all four of our "compass" neighbors (Hendersonville, Weaverville, Morganton and Canton) own their water system and charge differential rates for non-city customers; (2) the difference in those rates is from 60% (Hendersonville) to 100% (the other three) more for non-city customers; (3) differential rates are unencumbered by restrictions on their use; (4) the point of negotiated compromise should not be on whether the City has differentials, but on how much differential we have and over what period of time; and (5) one sample negotiated outcome (a) no differential for 2 years; (b) a cap of 15% differential for the next 3 years; (c) a cap of 25% for the next 5 years; (d) a cap of 50% for the next 5 years; and (e) removal of all caps after this 15 year period.

In summary, (1) borrow from existing models - our neighbors; (2) concentrate on core issues versus distraction issues; (3) treat Asheville like other cities in North Carolina; (4) keep an eye on fairness to all City and County water users; and (5) support incremental implementation as the primary point of compromise.

Where do we go from here? Plan A - Call for a return to an open negotiation table with a determined eye on these parameters. Plan B - Begin negotiation on consolidation of City and County government as a means to resolving our water impasse, duplication of services and waste of tax supported resources. Plan C - Carry out the matter through our legal system until we reach a point of conclusion. Plan A represents the most reasonable outcome.

Let's get started and hold to our course regardless of pressures to (1) be nice (let's keep our better eye on being fair and right); (2) surrender to uninformed criticisms; (3) minimize the value of the City owned water system; (4) treat Asheville differently than other cities; and (5) serve our own political interests. It's time to authentically think "regionally" and borrow wisdom from our neighbors."

Vice-Mayor Jones felt that in negotiating you must listen to each others interests. While Councilman Mumpower's plan would be a fabulous outcome, it would mean that we have not heard Buncombe County for the last three years. If we want to advance our region, then we have to understand that Buncombe County is not open to differentials.

Councilwoman Cape believes there is a quality in regionalism that the water system may be a part of. We need to talk about the systematic health of this region through growth management, economic development, resource management, environmental protection, water usage, etc. We should perhaps step back, move ahead with the lawsuit and start the conversation in a different way. She doesn't believe in consolidation of the City and County governments, but we have to learn to work together. She hoped that as we look forward we say that we have this incredible rich resource that is part of the systematic health of this region and how do we come to the table and say how do we manage it as a region.

Mayor Bellamy said that the issue of the disagreement on water in her opinion is over. The Asheville City Council said were going to take over our water system without the advisory board, e.g., the Water Authority. In her mind, the issue of who is going to own the water system is complete. Since that time, Water Resources Director David Hanks has prepared a list of what we have done with our system.

Mr. Hanks briefly reviewed what has happened with the water system since the City has taken over operation: (1) the City took over operation of water system July 1, 2005; (2) system has over 51,000 customers; (3) over 1,600 miles of water main lines; (4) City approved a Capital improvement fee; (5) the City has reinvested over $15 Million in system (a) Water Master Plan; and (b) new waterline of almost 2 miles on Fairview Road; (6) water treatment plant upgrades (a) to ensure continued high water quality; (b) upgrading North Fork; and (c) bring Bee Tree Plant online; (7) $40 Million Revenue Bond - improve system reliability; and (8) system improvements (a) implemented Computerized Maintenance Management System; (b) active Asset Management Program; (c) Cost of Service study; (d) ISO 14001 Environmental Management System; (e) QualSevice - AWWA Peer Review; and (f) Customer Service Response system.

Mayor Bellamy noted that in the last 2.5 years, Mr. Hanks has pointed out how much we have done as a city to improve the water system. The issue at hand, in her mind, is the issue of equity. Is it fair for the City of Asheville to carry the load of improving an aging water system that is actually the collective systems of Buncombe County in some manner? Not all of it, but in some parts we have taken ownership of some systems that were outside the city limits in the 1920's. But more importantly, is it fair looking at other cities of how they deal with growth management and how they deal with paying for city services that others use outside the city limits. She read the last proposal that the City put to the County on July 3, 2007, which addressed the issue of

those equity issues: "Legal Issues: (1) no differential water; (2) City Water Department; (3) County water facilities - transfer current and future assets; (4) Airport Authority - hold pending Henderson County negotiations; (5) Annexation - developments within one mile, 16+ residential units and/or 10,000+ square feat non-residential and (6) diversion (5%/5 years) for water related infrastructure. The Memorandum of Understanding: (1) waiver of water charges for County and City; (2) bring City trash to County landfill and under long-term CPI adjusted fee structure; and (3) permit and inspect Buncombe County Schools, Asheville City Schools, and A-B Technical Community College as County buildings. The City would transfer to County: (1) Civic Center - operations, maintenance and capital with continued Arena or Performance Hall at current location; (2) Civic Center Parking Deck - transfer with County participation in parking needs analysis and commitment to replace lost capacity with new deck; (3) Golf Course; (4) Nature Center - current operations and associated property; and (5) Recreation Park - pools and other recreation operations, administrative building and associated property. The financial impact would be: Civic Center subsidy - $500,000; Civic Center capital - $400,000; Nature Center subsidy - $500,000; Recreation Park subsidy - $70,000; and Water fee waiver - $150,000, for a total City budget savings of $1,620,000."

Mayor Bellamy said that in 1981 when the original water agreement was signed between the City of Asheville and the County of Buncombe it was done so in a manner to try to find out how to be equitable for the City of Asheville. The reason the amenities were put on the table is because the Civic Center, Golf Course, Nature Center and Recreation Park are not only used by City of Asheville taxpayers, but they are maintained only, on a regular basis, by City of Asheville taxpayers. We do have a facilities fee at the Civic Center of approximately $1 but that does not begin to cover all the costs that it takes to recover for the Civic Center. When Council was considering transferring those assets to the County it was to get more than just the City of Asheville taxpayers to pay for those amenities. It wasn't to be a red herring, a fluke, or bad negotiating skills. The goal was to try to cast a net on who should help pay for those amenities. One thing the City of Asheville felt was very important to us was the ability to annex areas that are on the perimeter of the City who are tapping into our water system, but who are further out. Former Planning & Development Director Scott Shuford did a presentation which showed how the City of Asheville would be much larger than it currently is had we gone through the process that other municipalities use of if you want to tap into our water system, that means you come into the City of Asheville. The City of Asheville does not have that tool in our toolbox so we were trying to acquire that by legislative means. She asked Interim Planning & Development Director Shannon Tuch to explain why 1/2 mile could not work for us to be able to meet the needs of using a good tool that municipalities across the state currently have in place but don't.

Using slides, Ms. Tuch said that Planning & Development Department was asked to examine the value of voluntary annexation for new developments within 1/2 mile of the City's primary corporate limits in exchange for City water service. We looked at a variety of things in our analysis. Her first image showed the City's primary corporate limits. The second image is the areas under consideration which include properties around the City's boundaries that have been studied and identified as having been developed or are prime for new or re-development and may be suitable for annexation either now or in the very near future. These areas are identified on the officially adopted map which was adopted by City Council in 2006. The third slide shows the 1/2 mile and the fourth slide shows the 1 mile, which more fully resembles the boundary of the areas under consideration. Senate Bill 629 offered the 1/2 mile annexation area and it was the City's interest to consider the possible 1 mile so we looked at both. A big part of this analysis was to look at where development is occurring. Because the large majority both in the 1/2 mile and the 1 mile area fall in areas that are outside our review jurisdiction we don't have the permit information as we would normally have for development projects inside the City. We do have the location of the water lines, as well as the location of new water meters. She showed another slide showing the location of the new water meters that have been installed in the last 3 years in the 1/2 mile and the 1 mile area. We have some concentrated areas of development. You can see that the large majority of the redevelopment is actually occurring in the full 1 mile area. We feel that this is because the large majority of 1/2 mile is currently developed and already has water lines and

water meters. The agreement also doesn't address what to do about the already developed properties, even though portions of these developments fall within the 1/2 mile area while the large majority of the development falls within the 1 mile area. It also doesn't address smaller scale projects. After reviewing this, it's an easy conclusion to see that an agreement based on voluntary annexation of properties within the 1/2 area radius didn't really accomplish much since the large majority of that development is occurring in the 1 mile area, with the 1/2 area already being served with water lines and water meters. Whether you consider the 1/2 mile or the 1 mile, both create problems by establishing isolated jurisdictional areas. We would develop problems of providing services to non-conforming areas. That would occur in either the 1/2 mile or the 1 mile areas. It puts us into a position of making one of two decisions when faced with looking at those voluntary annexations for properties that are not contiguous. The first is because of the expense in providing services to those areas, we may simply have to deny the voluntary annexation. The second is that we may have to look at involuntary annexation in order to bridge the gap. The idea that this would prevent us from having to do as many involuntary annexations is probably a myth. If anything, it may motivate us to do more so that we can effectively provide service.

Mayor Bellamy said that clearly what was being presented as an alternative for us wasn't as beneficial as it could have been, looking at the tools the other municipalities have. The main reason that we felt like annexation was important is we needed some tools to be able to deal with involuntary annexations so we could get people to voluntarily come into the system. Other cities have the tool of when you tap into the system, you come into the city. Another thing that was important was the diversion of funds. Whether we like it or not we have to own the history of Asheville. It's always forgotten that when the depression hit and most municipalities and counties across this country were forfeiting their responsibility to pay back their debt to the federal government, the City of Asheville's forefathers said we shall pay back every cent we owe of water bond money. That put the City of Asheville basically on standstill for almost 50 years until the mid-1970's until we paid off the last water bond. The City of Asheville said we love this country enough to pay off our debt. And, when we said that as a community, that meant that all the resources that we were collecting essentially went into paying that debt. And the only real revenue source that the City of Asheville had at that time was the water fund and that did help pay for City infrastructure, in addition to police cars, firefighters salaries, and basic city services. The City of Asheville gets this bad name of dipping our hands in water coffers. If you look at the history of the City of Asheville, it seems that someone should be proud to say that my City didn't forfeit on its bonds. My city said we will pay back the federal government every nickel, every dime, every $1,000, every $10,000 that we owe. But we are criticized as being the bad guys. So when it comes to 1981, we have a water agreement and there are some diversion of funds that were agreed by all parties at the table. The City of Asheville got it's 5% and it did what it said it was going to do. It used the 5% to do what it needed to do for the City of Asheville. So today we get this bad rep that we are going into the City coffers and dipping into our water fund - no we're not. Now we have data to show that all money that has been collected by the 51,000 customers in our water system is going back into the pipes. But at some point we need to expand that to more infrastructure and that is why we said after five years we were willing to say that 5% of that money goes back into infrastructure that is related to the water system. It makes sense to her that what we had happen on Fairview Road is what should happen throughout the City of Asheville. When you put in a major water line in the City of Asheville, you should also get a good street out of it, get the stormwater fixed, as well as the sidewalks. It makes sense to her instead of having to use other pots of money to do that. That is not a diversion of funds. To the citizens of Asheville, her goal is not to spend a lot of money in a lawsuit. What she is trying to fight for is to make sure that, as stewards of the water system, the funds that we have coming into the system that we can use them for water related infrastructure and have the tools to be able to entice developers to come into the City up front of the development occurring. That way we won't have so many contentious involuntary annexations occurring in our community. Her goal is not to bad mouth any other elected officials about their motives or why they do what they do. She's not God and she can't see their hearts, but she is the Mayor and her goal is to continue to work with any elected official to try to resolve the equity issue. As long as she's Mayor, she will continuously and actively work to keep the system in the hands of the City of Asheville - bottom

line. That is important to her. Everything else we can talk about but the system should remain as the City of Asheville's system.

Councilman Newman said that there is this ongoing lawsuit and as a result of that, we have had to, and appropriately so, consult with our attorney frequently about legal matters. There have been a lot of open meetings between us, the County Commissioners and the legislators. There has also been a lot of informal conversations not in the public. In the spirit of trying to find that agreement which he sincerely believes we came extraordinarily close to having a meeting of the minds, but ran out of time, he moved to formally express our support for the settlement outline we have before us dated July 3, 2007, and note that the only outstanding issue that remained existed with our legislative delegation - being the discussion of the 1/2 mile vs. 1 mile voluntary annexation. The Asheville City Council and the Buncombe County Commissioners actually had a meeting of the minds on a settlement of the water dispute. We would also invite our state legislators and our County Commissioners to meet with us in public in the next 30 days, or as soon as we can gather the parties together, to discuss this outstanding issue of voluntary annexation. We invite our legislators to hear from our staff and to look at the reasons why we felt that the issue of voluntary annexation capabilities out to 1 mile is so essential to the health of Asheville and it's critical to settling the issues. And, that we affirm, as per this July 3 settlement that if the legislative delegation would support the 1 mile policy and the other items that we have all already agreed to, that the Asheville City Council will agree to end the litigation. This motion was seconded by Vice-Mayor Jones.

Councilman Mumpower believed that the July 3, 2007, is a surrender document that ignores the realities that other cities do and sells Asheville and our future out. He believes we went against our word to negotiate at an open table. They were all behind closed doors. We should not be giving up except for matters of principle and sound reason and the July 3 offer doesn't remotely resemble that. He thinks the point of compromise is to take our time in getting to the model that every other city-owned water system, with one or two exceptions where the city takes up the whole county, uses in North Carolina. We all have an incentive to be at the negotiating table. He believes the truth is that we have not been at a point of fairness and compromise. He urged Council not to sell Asheville out that this motion does.

Councilman Freeborn said that based on conversations with staff since crafting the July 3, 2007, offer, he is feeling that that is not really the solution. However, we do need to tackle the voluntary annexation issue and the overarching issue of should you be annexed if you tie into municipal services, and water and sewer are municipal services. He could support the motion if it is for moving forward with bigger conversations. He wasn't sure if he could support the motion if it's just us negotiating this one issue of 1 mile vs. 1/2 mile. If we open ourselves back up and ask what are the issues we are trying to wrestle with, he could support a greater conversation about that and the sooner the better is in everyone's interest.

Mayor Bellamy said that understanding the parameters in which we live in, it would be her desire not to have to give away any of the City assets but get partners in fixing the Civic Center and get partners on making sure that the irrigation system at the Golf Course is up to par. The goal would be that the citizens of Asheville would not have to give up those assets in order to get assistance with them. It's been said that the City of Asheville doesn't know what to do with the Civic Center. That's just not true. We know that it needs $15 Million worth of improvements, so we said we would put $400,000 annually towards improvements over the next few years. Why don't we have a good enough relationship with the Tourism Development Authority, the Chamber of Commerce, Buncombe County and our legislators in Raleigh to say you shouldn't have to give up this asset that the City taxpayers paid for - we will assist you in making it better. Why should the City government stop paying its water bill if each of you have to pay yours. Why should the City even consider taking its trash to any other municipality? It's our trash - we shouldn't take our trash to any other place. If the County can do a good job on inspecting its own buildings, why not let them. They pay for the schools. Regarding the issue of diversion of funds, if its infrastructure related and associated with the water system and we can track it with our accountants, which

should happen immediately because we need to fix the system, our streets and our sidewalks now. We should have partners in this procedure. We shouldn't have to give and take and tussle. What is missing from moving forward? When made an agreement with Henderson County to sell them water it was to meet their needs in order for them to be successful. We sell water to Black Mountain and they charge a differential rate with our water. We sell water to Woodfin. We sell water to almost all of our partners in the area. We're their back-up plan. So, if we can do that with other local governments, she's going to hold out hope amongst hope that our legislators and our County Commissioners will come to the table for us to get to a place that is better than where we are and better than where we've ever been. Tonight when the County contributed $35,000 to look at the issue of the Asheville Design Center alternative 4-B, that tells her that we are stepping in the right direction. She is willing to continue to talk to people on a regular basis to make a difference in this issue. If the lawsuit is settled, that doesn't mean that the conversation is over for her. It means that is the State of North Carolina's opinion, but we still need to work regionally together. That would be her goal and she won't support the motion.

Councilman Davis said that the reality is that he has not been supportive of giving away these assets for $1.6 Million. He is not supportive of this. We should be negotiating this in the open and for what we contribute to this area. He and others have worked very hard at getting the Civic Center to a better point and it hurts to see that we couldn't get regional cooperation. And to see us give up a parking garage when we are looking to build parking garages doesn't resonate well with him. He is not supportive of the motion.

Vice-Mayor Jones said we all have principles we hold very dearly. The public wants us to figure this out. No one liked spending the inordinate amount of time spent on this issue but we are the elected people to do the people's business and the people's business is to try to come together on this issue. We have to get a better plan around forced annexation. She feels that the best thing we can do for the future of the Civic Center is to get a different owner of that property in order to get funding. She is willing to keep working to get to a better place.

The motion made by Councilman Newman and seconded by Vice-Mayor Jones failed on a 2-5 vote, with Councilman Newman and Vice-Mayor Jones voting "yes" and Mayor Bellamy, Councilwoman Cape, Councilman Davis, Councilman Freeborn and Councilman Mumpower voting "no."

Mayor Bellamy said that even though the motion failed, we will continue to talk. She has no problem with writing another letter to all elected officials in County government and our state legislators in Raleigh inviting them to a meeting. She doesn't need a motion to make that happen. She has talked with Representative Goforth and Senator Nesbitt since the closing of the session so it's not over for her. She's holding out hope that we're going to get to a good place and it may not look like this. She thinks there will be more creative ideas happening.

Mayor Bellamy said that we will continue to look for situations to address the equity issue. She hoped that Council feels that we will keep the system and look at regional issues.

B. CLAIMS

The following claims were received by the City of Asheville during the period of August 3-9, 2007: Kathryn Roberts (Transit Services), Frank Casey (Water), AT&T (Streets), Barbara Smith (Streets), Barbara Taylor (Water), Asheville Sports Prop (Streets) and David Parks (Sanitation).

These claims have been referred to Asheville Claims Corporation for investigation.

C. LAWSUIT

The City received a Complaint on August 10, 2007, which is generally described as follows: Magnolias' Raw Bar & Grille, Inc. v. City of Asheville. The nature of the proceeding is a complaint for declaratory judgment and injunctive relief to declare the noise ordinance unconstitutional as a violation of due process of law. This matter will be handled in-house.

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mayor Bellamy was pleased to attend the graduation of the students from the City of Asheville Youth Leadership Academy in which they worked with various City departments and organizations. She felt that the students walked away with a desire to do better and with a commitment to come back next year. It shows that when people are given the opportunity to thrive and be successful, they will take it every day. She was pleased to see the success of that program.

Mayor Bellamy said that we had people who were part of an action group go to the Bank of America offices downtown and chain themselves in the building to protest climatic change through the investment in coal fire plants in places that are not even in our community. She wondered why the group protested in Asheville when the Bank of America headquarters is two hours away in Charlotte, North Carolina. Protesting of this nature takes our city dollars and our city resources. In addition, Progress Energy is doing more investment locally in cleaning up our smokestacks and Asheville is the model place in how to have a cleaner power plant. Her concern is that she doesn't want this to become a pattern in the City of Asheville of when protestors refuse to leave private property, they lock themselves in with chains. That is wrong. In addition, she noted that at no time did our police officers use tazers. Our Environmental & Energy Committee is looking at ways to address this issue, one of which is through our carbon emissions. There are creative ways to address this in our community and we don't have to have these types of demonstrations that negatively impact people.

Mayor Bellamy said that we all love Asheville and she is asking citizens and visitors to help clean up Asheville. The amount of litter in our community is getting out of control. We are going gang-busters on putting streets and sidewalks in, adding more police and firefighters and basic city services, but we can't pick up litter on private property. The public holds Council accountable for all kinds of issues, so she is putting the litter accountability back on the public. It requires each of us to do a better job in cleaning up Asheville. If you need trash cans, let us know. We own that. Cigarette butts are litter. Recycle your bottles and cans. Dispose of litter properly. Ingles has bins to where you can bring your used plastic bags and Earth Fare encourages you to bring in canvass bags. This is your city. Take pride in it. Teach your children to pick up litter.

Councilwoman Cape did not want to deter the right of people to protest within the City of Asheville. America is a place for people to stand up and voice their dissent in all areas. Although she's never been a protestor, but doesn't want to say that others can't protest. That distinguishes us from many other countries in the world.

Councilman Mumpower appreciated the Mayor highlighting that the people weren't just protesting but intruding on the rights of others and disrupting business. He felt our police officers are to be commended for response to those activities.

Rev. Christopher Chiaronmonte urged Council not to restrict people's rights.

Mr. Joe Minicozzi, President of the Coalition of Asheville Neighborhoods, read the following letter dated August 14, 2007, to Mayor Bellamy. "On July 9, 2007, the Coalition of Asheville Neighborhoods (CAN) Board voted to draft and deliver a written response of the City of Asheville for (1) the City's plan of action, timeline, and deadline for attaining compliance for Staples for sign and setback violations that were outlined in our May 2006 presentation; (2) the City's plan of action, timeline, and deadline for attaining compliance for GreenLife for the

bufferyard and driveway violations that were outlined in the September 2005 presentation; and (3) we would like a response to the above two items in writing and if you are choosing to do nothing, please say so in writing.

"On August 22, 2006, Dr. David W. Owens, professor of Public Law and Government from the Institute of Government at UNC Chapel Hill, delivered his report confirming the non-compliance issues with Staples, Prudential and GreenLife that CAN had been articulating since before the August 22, 2005 public comment presentation (exactly one year later). In the spirit of good faith, CAN offered a path of remediation for all three projects; we spent a good deal of money seeking a public hearing to appeal the decisions which resulted in many months of delay and dispute with city staff. You announced at the close of the Owens presentation on August 22, 2006 that 'Council will take ownership from here on out', and plans for action to correct the non-compliance would be pending. CAN was asked for patience in the matter and was satisfied that Council had taken ownership of the situation to move in a direction of correction. We are closing in on a year from that date.

"Great progress was made with the Prudential case when their signage was brought into compliance and there was talk of conversations with GreenLife and Staples. Staples rebuffed the City's attempt to talk and seek compromise for setback violations by altering its landscaping and signage. GreenLife presented a lot of talk and no real action. The City never issued the required Notice of Violation per article 18 of the UDO to either party, even though we encouraged you to do so to encourage remediation of the projects. To our best knowledge, no fines or tickets have been given to trucks on Maxwell, nor do we know if GreenLife has been billed for the damage they did to the Maxwell sidewalk and the city's cost of service to repair that sidewalk. Mr. Swann even offered to pay for the sidewalk repair if the City would bill him. Most of our communications since August of 2005 have been informal, and the lack of information or clear path of attaining compliance has become more evident to our Board as the year has passed.

"On April 10, 2007, I attended Council and asked for closure on GreenLife and Staples and a plan for seeking that closure in writing from the City. Additionally, Council asked Mr. Bob Oast to draft a letter clarifying the use of sidewalks for parking delivery trucks as 'a reasonable use of the sidewalk' according to the UDO as designed and used by GreenLife. Councilman Newman asked Mr. Richardson to get dates from GreenLife on the submission of their plans for site correction. On June 12, 2007, I attended public comment, and again, asked for the above in writing. We have yet to receive any written correspondence addressing these requests. Please deliver them as soon as possible.

"Additionally, since these matters have been open, other matters of concern have come to us and we seek the following: (1) given the issues involved in enforcement of 966 Tunnel Road, we respectfully request that Council repeal the process for allowing Conditional Zoning. This project highlights the significant issues that come with creating site specific ordinances that are difficult to administer and the product that was approved for this condition could not have met rezoning standards in its situation. Nor does this example further any of the City's larger goals of mixed-use development, green architecture, smart growth, affordable housing, etc. This is purely speculative zoning change that perpetuates the sprawl along Tunnel Road that the neighborhood was seeking to avoid. Give this example of use, CAN seeks removal of Conditional Zoning from the UDO until proper standards could be crafted for better compliance/enforcement as well as standards for fulfilling our communities goals; and (2) CAN requests that City Council and Boards and Committees appointed by Council receive proper training as to the legal process of the UDO from a qualified member of the Institute of Government. This should include, but not be limited to, matters of due process of quasi-judicial hearings, finding of fact, procedural requirements of enforcement, Robert's Rules of Order, etc. These training sessions should be video taped and as new members are introduced to a Board, they should receive the same training.

"We regret that these requests come in writing, but we have waited for some months for a response to our requests via email, in conversations, and during public comment at City Council

meetings. We understand that these projects have been very frustrating. They have been frustrating to CAN members as well. The frustration comes with the addition of the years that we have given to help get the UDO adopted and help make recommendations for modification to suit our city's growth. It is extremely frustrating to work to adopt rules for our City and when non-compliance is pointed out, citizens are treated to a pattern of stone-walling by our governing. The first step in prevention of non-compliance is adequate plans review. The second is adequate inspections during construction. The final step is utilizing enforcement means and ultimately fines as outlined in Article 18. GreenLife, Staples, and the Prudential buildings are the poster children of non-compliance and our request was to make them right by Asheville City laws. Our intent is in a transparent process of a fair government where our rules apply to everyone and due process is followed. In order to change the standard behavioral practice from 'it is easier to ask forgiveness than permission', this behavior should be reprimanded, not reinforced. A just and equitable society cannot function without transparent, impartial, and consistent governance. We will continue in our requests to have you enforce our laws and look forward to your timely written response."

Mayor Bellamy said that we will have a GreenLife and Staples update on August 28, 2007, agenda.

After a short discussion about the mandated stormwater ordinance coming back to Council on August 21, 2007, it was the majority of Council's consensus to begin conversation on that date to determine what we need to do to at least get ourselves into compliance and still have time within which to craft our own ordinance. Mayor Bellamy said that she has asked staff to prepare a breakdown of what the minimum is of the state mandate, what the committee has recommended, what they have heard from the community, and enforcement issues. After discussion, Council may be able to move forward.

Vice-Mayor Jones announced that Asheville City Schools start August 15, 2007, and Buncombe County Schools start August 16, 2007, so please drive safely.

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 11:19 p.m.

Tersha Lipe
CITY CLERK

Terry M Bellamy
MAYOR

Tuesday – August 21, 2007 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Keisha Lipe

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Freeborn gave the invocation.

I. PROCLAMATIONS:

A. BEST WORKPLACES FOR COMMUTERS AWARD

Ms. Kathy Molin was pleased to announce that Asheville has received the designation of Best Workplace Commuters from the US Environmental Protection Agency and the US Dept. of Transportation.

On behalf of City Council, Mayor Bellamy thanked Ms. Molin for her leadership on this program.

II. CONSENT AGENDA:

At the request of Councilman Mumpower, Consent Agenda Items "G" and "H" were removed from the Consent Agenda for individual votes.

At the request of Mayor Bellamy, Consent Agenda Items "I" and "J" were removed from the Consent Agenda for individual votes.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON AUGUST 14, 2007

B. RESOLUTION NO. 07-155 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A UTILITY AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR THE DESIGN-BUILD OF A 12-INCH WATER LINE ON SMOKY PARK HIGHWAY AND KNOWN AS PROJECT I-4401

Summary: The consideration of a resolution authorizing the Mayor to enter into a Utility Agreement with North Carolina Department of Transportation (NCDOT) in the amount of $498,571.78 for the design-build of a 12 inch water line on Smoky Park Highway and known as Project I-4401.

The NCDOT is widening I-40 at Exit 44 and making improvements along US 19/23 Smoky Park Highway from Old Haywood Road to Monte Vista Road. This road project includes replacing the current 3 inch galvanized water line along Smokey Park Highway with a new 12

inch ductile iron line. This project is part of the design-build construction of I-40 from west of SR 1224 (Monte Vista Road) to I-240 in Asheville.

The current water line on this section of Smoky Park Highway is a three (3) inch galvanized that has numerous emergency breaks during winter months and restricts flow to a 12 inch line on Smokey Park and does not allow for adequate fire protection for commercial businesses at the I-40, Exit 44 corridor. This project will enhance customer service by eliminating costly line breaks which cause water outages to area customers on the current line and will help loop the water system to the west region of the system. NCDOT lump-sum cost is $498,571.78. Previous estimate two years ago was $249,999 which was being budgeted over a three year budget cycle at $83,333 annually. NCDOT changed this project to a design-build project where design and build is by the same contractor. Construction material increases over the past two years have driven this cost up. $166,666 was previously programmed for this project in FY 2006/07 and FY 2007/08 with $331,905.78 additional funds required to cover the entire amount. These funds are being reallocated from the Neighborhood Enhancement Projects for this fiscal year. Moving of funds will not impede the neighborhood projects being upgraded. These projects are now part of the revenue bond funding. NCDOT has also changed their project invoicing policies and will submit invoices once a project is substantially finished where before it was well after total project completion.

PRO: This project will eliminate a problematic 3 inch water line which will enhance customer pressures and flow; and provide fire protection to area businesses at and near Exit 44 of I-40.

CON: There are no cons to this project.

Staff recommends approval for the Mayor to execute the Municipal Utility Agreement with NCDOT for the Project: I-4401.

RESOLUTION BOOK NO. 30 - PAGE 403

C. **ORDINANCE NO. 3513 - BUDGET AMENDMENT FOR UTILITY AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR THE PROJECT KNOWN AS PROJECT I-4401**

Summary: See Consent Agenda "B" above. 105

ORDINANCE BOOK NO. 24 - PAGE

D. **ORDINANCE NO. 3514 - BUDGET AMENDMENT TO RECEIVE FUNDS FROM THE FRIENDS OF THE NATURE CENTER THAT WILL BE USED TO PURCHASE NEW TRASH RECEPTACLES TO BE LOCATED THROUGHOUT THE NATURE CENTER**

Summary: The consideration of a budget amendment, in the amount of $5,500, for a contribution from the Friends of the Nature Center.

The Friends of the Nature Center is a 501 (c) 3 non-profit organization whose purpose is to act as an advocate for the Western North Carolina Nature Center, and to raise funds to support the programs and enhancements at the Nature Center.

The Friends recently acquired a $5,500 donation that will be used to purchase new trash receptacles to be located throughout the Nature Center and will replace the existing receptacles that are old and deteriorated.

Pro:

- Provide funds to purchase new trash receptacles that will replace old receptacles, and improve the overall appearance of the Nature Center that contributes to an overall positive customer experience at the center.

Cons:
- None

The Parks and Recreation Department recommends City Council approve a budget amendment, in the amount of $5,500, for a contribution from the Friends of the Nature Center.

ORDINANCE BOOK NO. 24 - PAGE 167

E. RESOLUTION NO. 07-156- RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A MUNICIPAL AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION TO RECEIVE $600,000 IN FEDERAL MONEY TO CONDUCT PRELIMINARY DESIGN AND ENGINEERING FOR A PORTION OF THE WILMA DYKEMAN RIVERWAY PROJECT

Summary: The consideration of a resolution authorizing the Mayor to execute a municipal agreement with the N.C. Dept. of Transportation (NCDOT) to receive $600,000 in grant money to conduct preliminary design and engineering for a portion of the Wilma Dykeman Riverway transportation project and the associated budget amendment in the amount of $600,000.

In 2005 the City of Asheville requested and received a federal appropriation from the US Dept. of Transportation (USDOT) in the amount of $600,000 for preliminary engineering and design for the Wilma Dykeman Riverway. These federal transportation funds are managed by the NCDOT. The funds are now ready to be applied toward this project, and the NCDOT has programmed the funds into the State Transportation Improvement Program.

This project will build on the previously developed conceptual design and economic development plan contained in the Wilma Dykeman Riverway Master Plan. The overall project is a fourteen mile corridor along the French Broad and Swannanoa Rivers in Asheville. The master plan for the corridor proposes to link together a number of existing roadways to create a unified transportation facility. The roadway will balance the needs of motorists, cyclists, pedestrians as outlined in the Master Plan.

Design of the Riverway requires a significant amount of preliminary engineering work. The project include some road relocation, median treatments, turn lanes, and sidewalks and greenway facilities. The design of the Riverway will pay special attention to plans for economic development and redevelopment, flood protection, historic properties, aesthetic considerations, pedestrian accommodations, and development of the Asheville Greenways Master Plan.

The amount of the grant will not cover engineering and design for the entire Riverway. City staff and NCDOT staff have agreed that the focus for this first phase should be on Riverside Drive and Lyman Street - a project that would extend from Broadway near UNC-Asheville to Amboy Road. There are several reasons for this recommendation:

1) Lyman Street is an Asheville City Street, and ultimately it is the City's responsibility to make improvements to this section;
2) In this section, the primary purpose for making improvements is economic development. Other sections of the Riverway are more likely to receive highway dollars through normal channels because of the traffic congestion issues in those areas;

3) This section of the Riverway contains the intersections that cause the most disruptions to the continuity of the facility.
4) The project has logical endpoints.

This approach was presented at a meeting of the City's Sustainable Economic Development Advisory Committee on June 14, 2007. The meeting attendees agreed with this strategy for implementation.

A request for proposals will be issued this fall, with work on the design anticipated to begin in early 2008. City staff will oversee the project, which will be carried out by a consultant.

This project supports the City of Asheville's Sustainable Economic Development Plan, Greenway Master Plan, and the 2025 City Development Plan. It also supports the French Broad River MPO Long Range Transportation Plan. In addition, it implements goals in priority areas identified by City Council:

- Economic Development – Pursue Riverfront Redevelopment.
- Critical Services and Infrastructure – Increase Greenway Development.

PROS:

- Executing this municipal agreement is one of the required steps to follow-through on the commitment to pursue this federal appropriation.
- No local matching money is required in order to receive the funds.
- Implementing the Riverway Master Plan is one of the strategic goals of the City.

CON:

- Administering a study of this size and following through on implementation will require significant staff time.

Staff recommends City Council approve a resolution authorizing the Mayor to execute a municipal agreement with the North Carolina Department of Transportation to receive $600,000 in federal money to conduct preliminary design and engineering for a portion of the Wilma Dykeman Riverway project and the associated budget amendment in the amount of $600,000.

RESOLUTION BOOK NO. 30 - PAGE 404

F. ORDINANCE NO. 3516 - BUDGET AMENDMENT TO RECEIVE FEDERAL MONEY TO CONDUCT PRELIMINARY DESIGN AND ENGINEERING FOR A PORTION OF THE WILMA DYKEMAN RIVERWAY PROJECT

Summary: See Consent Agenda "E" above.

ORDINANCE BOOK NO. 24 - PAGE 169

G. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH REAL ESTATE RESEARCH CONSULTANTS FOR THE REQUEST FOR PROPOSALS PHASE PROJECT MANAGEMENT PROFESSIONAL SERVICES

This item was removed from the Consent Agenda for an individual vote.

H. BUDGET AMENDMENT FOR FUNDING OF THE ASHEVILLE MURAL PROJECT

This item was removed from the Consent Agenda for an individual vote.

I. **RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE RIVER SCULPTURE FESTIVAL'S OPENING RECEPTION**

This item was removed from the Consent Agenda for an individual vote.

J. **RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE PURE FOOD PARTNERS' ORGANICFEST FESTIVAL**

This item was removed from the Consent Agenda for an individual vote.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Freebom moved for the adoption of the Consent Agenda. This motion was seconded by Vice-Mayor Jones and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

G. **RESOLUTION NO. 07-157- RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH REAL ESTATE RESEARCH CONSULTANTS FOR THE REQUEST FOR PROPOSALS PHASE PROJECT MANAGEMENT PROFESSIONAL SERVICES**

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with Real Estate Research Consultants (RERC) for Request for Proposals (RFP) Phase Project Management Professional Services.

At the time of City Council's approval of the Project Management Scope of Services for the City Owned Properties, staff indicated that there would be two future additions to the original Scope of Services. The first addition is for consideration by Council tonight and will allow the project management consultant to assist the City in the RFP phase once the short list of developers is formed. City Council has devoted a work session to help fully define the desired goals of the RFP. A future addition to the scope of services would occur during the detailed negotiations with any firms advancing from the RFP phase into the Development Agreement phase.

The action requested from Council is to approve the Addition to the Project Management Contract Scope of Services approved on March 6, 2007, by City Council. This will allow the City to build upon the identification and qualification of developers conducted in the RFQ Phase by taking the next step of outlining the City's specific expectations and requirements for each of the four sites and inviting the pre-qualified developers to propose in some detail how they would approach, finance, and implement development on those sites consistent with the City's goals.

Funding for this RFP Phase addition to the Scope of Services is available in the City's 2007-08 Budget in the Office of Economic Development budget. Therefore, a budget amendment is not required.

Pros:

- Assistance to staff and City Council in incorporating the appropriate mix or scale of retail, residential, office, lodging, and civic uses within development sites and into the RFP Document.
- Ability to advise staff and council concerning the expectations about the market's ability to support the above or similar uses.

- Knowledge of analytical processes to review financial and technical capabilities of respondents to RFQ and RFP that are not within the scope of staff expertise.
- National project experience in developing similar public offerings of property to developers to achieve specific public goals.

Con:

- City will be required to provide compensation to consultant prior to cost recovery.

City staff recommends City Council approve a resolution authorizing the City Manager to enter into an agreement with Real Estate Research Consultants for Request for Proposals Phase Project Management Professional Services.

Councilman Mumpower felt this was an additional investment of dollars for consultant fees and he would not support the action.

Councilman Freeborn moved for the adoption of Resolution No. 07-157. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 30 - PAGE 405

H. ORDINANCE NO. 3516 - BUDGET AMENDMENT FOR FUNDING OF THE ASHEVILLE MURAL PROJECT

Summary: The consideration of a budget amendment, in the amount of $6,000, for funding of Asheville Mural Project.

At the August 14, 2007, regular scheduled meeting of City Council a motion was passed to place the following item for consideration on an upcoming City Council agenda - authorize a budget amendment to provide funding to the Lexington Avenue Gateway Mural implementation by the Asheville Mural Project, a division of Arts2People.

Members of Council requested staff meet with the organizers of the mural and confirm that no funding for project implementation had been dedicated by the City of Asheville to date; and to confirm the amount of the current funding gap for project implementation. Staff has confirmed that to date, there have been no City funds used for implementation, and that the current funding gap for implementation is $6,000. The Asheville Mural Project/Arts2 People have risen over $20,000 for project funding from the private sector.

Pros:

- Meet Strategic Goal of supporting the Asheville Mural Project as established by City Council
- Provide gap funding for a Council-supported project that has been largely developed and paid for by the private sector.
- Provide improvement of Downtown Gateway.

Con: This is an unbudgeted request requiring reapportion.

Staff recommends Council adopt resolution authorizing a budget amendment, in the amount of $6,000, and transfer of this amount from undesignated fund balance.

Councilman Mumpower saw no problem with the project, however, he questioned spending $6,000 of taxpayer dollars for a mural.

Councilman Davis spoke in support of this expenditure as the merchants on Lexington Avenue are very supportive of this and they are encouraged to improve the corridor.

Councilwoman Cape moved for the adoption of Ordinance No. 3516. This motion was seconded by Councilman Freeborn and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 24 - PAGE 111

I. **RESOLUTION NO. 07-158- RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE RIVER SCULPTURE FESTIVAL'S OPENING RECEPTION**

Summary: The consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the River Sculpture Festival's Opening Reception on August 31, 2007.

The Asheville Area Arts Council has requested through the Asheville Parks and Recreation Department that City Council permit them to serve beer and/or unfortified wine at their event and allow for consumption at this event. The River Sculpture Festival's Opening Reception (the River Sculpture Festival is a collaborative public art event between Asheville Parks & Recreation, Asheville Area Arts Council and private individuals and sponsors) will be held on Friday, August 31, 2007 from 5:30 PM – 8:00 PM at the French Broad River Park.

Pros:

- Allows fundraising opportunities for charity
- Generates economic impact for the community
- Provides additional quality cultural programming and diversity

Con:

- Potential for public safety issues

The Asheville Parks and Recreation Department recommends City Council approve a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the River Sculpture Festival Opening Reception on August 31, 2007.

Councilwoman Cape moved for the adoption of Resolution No. 07-158. This motion was seconded by Councilman Newman and carried on a 6-1 vote, with Mayor Bellamy voting "no."

Resolution BOOK NO. 30 - PAGE 406

J. **RESOLUTION NO. 07-159- RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE PURE FOOD PARTNERS' ORGANICFEST FESTIVAL**

Summary: The consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at Pure Food Partners' Organicfest festival (an educational community celebration to support and promote organic farmers on September 8, 2007. Pure Food Partners is a non-profit, all volunteer organization.)

The Pure Food Partners group has requested through the Asheville Parks and Recreation Department that City Council permit them to serve beer and/or unfortified wine at their event and allow for consumption at this event. The Organicfest festival will be held on Saturday, September 8, 2007 from 10:00 AM – 8:00 PM at Battery Park Avenue & Otis Street.

Pros:

- Allows fundraising opportunities for charity
- Generates economic impact for the community

- Provides additional quality cultural programming and diversity

Con:

- Potential for public safety issues

The Asheville Parks and Recreation Department recommends City Council approve a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Organicfest festival on September 8, 2007.

Councilwoman Cape moved for the adoption of Resolution No. 07-159. This motion was seconded by Councilman Newman and carried on a 6-1 vote, with Mayor Bellamy voting "no."

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III. PRESENTATIONS & REPORTS:

A. FIREMEN'S RELIEF FUND ANNUAL REPORT

Mr. John Parris, Chairman of the Asheville Firemen's Relief Fund and Pension Subsidy Fund Board of Trustees, thanked City Council for allowing him to present the Annual Report, as this is the first time they have been requested to do so since he was appointed Chairman 21 years ago. He said that the N.C. Gen. Statute which regulates members of the Firemen's Board of Trustees are elected or appointed pursuant to N.C. Gen. Stat. sec. 58-84-30. It was ratified in 1949 and became effective January 1, 1950.

The Firemen's Relief Fund was enacted into law by the legislature in 1907 for the benefit of fire fighters injured or disabled in the line of duty. At that time fire fighters were volunteers. The Relief Fund was to help pay bills, etc., until they were able to return to work.

The Pension Subsidy Fund was enacted into law by the General Assembly February 28, 1979, to provide a Supplemental Retirement Fund for Fire Fighters in the City of Asheville. Senator Bob Swain sponsored Senate Bill 336 which was ratified on June 24, 1980, and became law establishing and governing the Firemen's Relief Fund of Asheville.

The Board meets twice a year. In August or September the Board meets to invest money received from the Department of Insurance. And in January or February to disburse the interest received from the Supplemental account to fire fighters that qualify for benefits. We made that disbursement in June of this year became of a May 2006 investment.

Most of the older retirees do not have Social Security, IRA's, 401(k)'s and other benefits that are available now. Salaries were much lower then and the pension benefits were lower as well. The supplemental benefits mean a lot to these recipients.

Our goal is to manage the money in these funds so we can continue to provide benefits to those that need it most. The Board plans to continue monitoring and updating the investment policy making sure we are investing the money according to the law in N.C. Gen. Stat. secs. 159-30 and 159-31 (FDIC coverage).

We started paying benefits in 1982 and we paid 23 retired Asheville fire fighters a total of $1,118.43. Those fire fighters represented 731 years of service in the Asheville Fire Department. In June of this year, 83 retired fire fighters received $71,729.74. These fire fighters represented 2,358 years of service. In the Relief Fund we have $45,000. The Pension Subsidy Fund has $858,854.51. In 2007, the shares range from 21 - 40 years of service. Our oldest fire fighter is 91 years old with the youngest being 55 years old.

In response to Mayor Bellamy, Mr. Parris said that all the money comes from the Dept. of Insurance to fund the pensions.

When Councilman Freeborn asked if the Board had any recommendations on how to improve the program, Mr. Parris responded that the program is currently running smooth.

On behalf of Mayor Bellamy, she thanked Mr. Parris and the entire Board for their hard work on behalf of the Asheville fire fighters.

B. BRIDGE MAINTENANCE

Public Works Director Mark Combs explained the bridge ownership/maintenance as (1) N.C. Dept. of Transportation (NCDOT) - maintains all major bridges in City limits; (2) City of Asheville; (3) Norfolk-Southern Railroad; and private.

NCDOT (1) bridges are very expensive to build and maintain - high stakes equal an aggressive maintenance program; (2) maintains 545 'structures' in Buncombe County (43 or 8% are 'structurally deficient').

NCDOT maintains 131 bridges within the Asheville's city limits. He explained the definition of structurally deficient and functionally obsolete.

Asheville maintains 35 secondary bridges. Twenty-four are over 20' long and are eligible for federal/state funds).

There is a bi-annual inspection of NCDOT's and Asheville's bridges. It comprises of (1) a third party structural engineering firm; (2) a comprehensive report - 40 pages for small bridge); and (3) recommends maintenance/repairs.

Asheville's bridge maintenance program follows the inspection report recommendations (1) work completed prior to the next inspection cycle; (2) major repair or night work budgeted for; and (3) replacement (East Oakview): 80%-20% funding.

He reviewed with Council the four Streets Division bridge projects.

In summary (1) all bridges maintained by the City and the NCDOT are inspected bi-annually (by a qualified engineering firm); (2) federal/state funds (80%-20%) available for replacement of sub-standard bridges; and (3) both the City and the NCDOT have proactive maintenance and repair programs.

In response to Councilwoman Cape, Mr. Combs said that (1) the Chunns Cove bridge is structurally deficient, at an estimated repair cost of $150,000; (2) the small bridge on Pinecroft Road is structurally deficient, at an estimated repair cost of $10,000; (3) the bridge on School Road West is functionally obsolete but meets it's need; and (4) the bridge on Azalea Road is functionally obsolete, and is only used by staff to access the site - it is not a for public use bridge. He said that any bridge that is dangerous to the public is repaired immediately.

When Mayor Bellamy asked what the plans are to repair the bridges, Mr. Combs said that the bridge on Chunns Cove Road is on our Capital Improvement Plan; the bridge on Pinecroft Road can be upgraded this year; the bridge on School Road West meets it's need; and the Azalea Road bridge is re-decked and doesn't need further repair. He noted that all four bridges are structurally sound.

IV. PUBLIC HEARINGS:

A. **PUBLIC HEARING TO CONSIDER REZONING 2 LOTS LOCATED ON BRITT DRIVE FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT, RIVER DISTRICT, AND RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT TO LIGHT INDUSTRIAL DISTRICT**

ORDINANCE NO. 3517 - ORDINANCE TO REZONE 2 LOTS LOCATED ON BRITT DRIVE FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT, RIVER DISTRICT, AND RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT TO LIGHT INDUSTRIAL DISTRICT

Mayor Bellamy opened the public hearing at 5:33 p.m.

Urban Planner Blake Esselstyn said that this is the consideration of an ordinance to rezone 2 lots located on Britt Drive from RM-16 Residential Multi-Family High Density District, River District and RS-4 Residential Single-Family Medium Density District to Light Industrial District. This public hearing was advertised on August 10 and 17, 2007.

The subject site is located off of Swannanoa River Road and Britt Drive and consists of approximately 9 acres. The lot is currently vacant and split zoned RM-16, River and RS-4. The smaller parcel (about 1/3 acre) is currently zoned River, while the larger parcel is zoned residential (almost entirely RM-16). The zoning line between the RS-4 and RM-16 districts runs directly behind the 14-foot strip of land that abuts White Pine Drive and the remainder of the site. The zoning for this strip would not be modified under the proposed rezoning.

Surrounding land uses and zoning include: multi-family (2 units) uses to the north and single-family residential uses to the east zoned RS-4; commercial uses to the south zoned River; and a mix of residential and commercial uses zoned RS-8, RM-16 and River to the west of the site.

The subject site has road frontage along Swannanoa River Road and also Britt Drive. Since the piece connecting to White Pine Drive would not be rezoned, in the event of a rezoning of the bulk of the site to Light Industrial, access would not be allowed from that street. (Non-residential uses are not permitted to obtain vehicular access from fully residential streets through residential zoning.) The topography on the lot is fairly steep along the north and east sides of the property. The land begins to gradually level out throughout the center of the property and along the west and south sides of the site. Abutting residential uses along the north and east sides of the property, for the most part, sit at a much higher elevation than the subject site. Abutting commercial uses to the west and south of the property sit at or just slightly below the same elevation as the more level areas of the site.

Some portions of the site are in flood hazard areas, primarily near Ross Creek along the western side of the property.

The applicant is requesting a rezoning of the lot in order to create development potential in allowing the range of uses that would be permitted in the Light Industrial District.

- The purpose and intent of the Light Industrial District is to reserve land for existing and future light industrial, office-warehouse, studio/gallery and related activities and for land uses that support these activities. Development standards are established to ensure that land uses located outside the Light Industrial District are not adversely affected by the negative impacts of the more intense development types permitted in this zoning district. Light Industrial Districts shall be located to capitalize on existing infrastructure where possible, such as transportation facilities and utilities.

- The purpose and intent of the RM-16 district is to permit a full range of high density multi-family housing types along with limited institutional, public and commercial uses to be located

near employment centers, shopping facilities, and other urban infrastructure capable of handling the demand generated by high density residential development.

A 2004 effort to develop the property with apartments was denied by City Council due to public safety concerns for residents due to the location of a private dam in the area and the flood hazard areas. A 2005 effort to rezone the property to River district was also denied, apparently due to concerns that the River District still allowed for residential uses. The Light Industrial district, created subsequent to these efforts, does not allow residential uses, except accessory dwellings, defined as a "residence located on premises with a main nonresidential use and occupied only by a caretaker or guard employed on the premises and, as applicable, his or her family."

Under the new landscape ordinance adopted in May 2007, a development in Light Industrial zoning would have to be separated from RS zoning by a 30-foot vegetated buffer, and from RM zoning by a 20-foot vegetated buffer. The Light Industrial district also has design and operation requirements regarding compliance with the noise ordinance, lighting, and directing entrances of buildings away from residential uses. Further, the setback standards specify special 30 foot standards for property lines adjacent to residential districts.

At their July 12, 2007, meeting, the Planning & Zoning Commission voted unanimously to recommend approval for this rezoning. Approximately 10 neighbors spoke in opposition, citing concerns about noise, lights, safety in event of a flood, and protection of Ross Creek. Commission members thanked the speakers for their civility in presenting their concerns, but agreed that, given the outcomes of the applicant's past efforts to enable development on the lot, and the commission's inability to prohibit *any* use of the lot, the proposed zoning district was the best option.

As of this writing, staff has received two direct communications regarding this item. One neighbor called with a concern about a private sewer line, relevant to development of the property, but not to this specific rezoning request. When the site was posted for the Planning & Zoning Commission meeting, the writer of this report spoke with a neighbor who was seeking additional information.

Based on the above analysis provided in the report, staff finds this request to be reasonable.

Pros

1) Rezoning the lot to Light Industrial District will allow the applicant an opportunity to select from a range of uses when developing the site that may be more compatible with the existing development along Swannanoa River Road, and also with the redevelopment efforts along the riverway.
2) The existing topography on the site provides natural separation from abutting residential uses on the north and east sides of the property, making the land more suitable for a wider range of uses. The floodway and floodplain along the western side of the property demand a separation for the neighboring uses on that side as well.
3) Any development of the site must comply with all City regulations including UDO requirements, NC State Building Code, and FEMA requirements.
4) The only permitted residential uses would be for a caretaker or guard, as explained above – less than what would be permitted under Level I review with the existing zoning.

Con

1) Portions of the site are within a flood hazard area. However, any development of the site would be required to comply with all FEMA regulations prior to the issuance of any building permits.

The proposed rezoning to Light Industrial district would be consistent with the zoning of abutting properties to the south of the site along Swannanoa River Road, and also with the established zoning along the north and south sides of the riverway. Staff feels that rezoning the lots will have little effect on the residential uses to the north and east of the site due to the existing topography and differences in elevation. Any development of the site would have to comply with the development and design standards required in the Unified Development Ordinance, including the landscaping and buffering of incompatible uses.

Based on the above, staff recommends approval of the rezoning to Light Industrial District as requested by the applicant.

Mr. Esselstyn said that the developer has stated verbally that if the rezoning is approved he is willing to give over the sliver of land to the adjacent properties in the single-family residential zone, however, City Attorney Oast has advised that that statement cannot be considered grounds for approval of the rezoning.

Mr. Craig Justus, attorney representing the applicant Batt Associates, presented Council with a packet of information. He briefed Council on a history of actions before Council, which led to two denials - one in March of 2004 to rezone the property to RM-16 and one in February of 2005 to River District. He said the creation of the Light Industrial District came shortly after the last denial and he felt that was created with this piece of property in mind. He explained how a light industrial use is the perfect transition in this area. He hoped that Council would not debate the issue of access via Britt Drive, as the property has direct access to Swannanoa River Road. He urged Council to approve the rezoning.

Ms. Patsy Brison, attorney representing Britt & Tilson Glass, owner of property which borders the property being considered for rezoning, presented Council with letters dated August 20, 2007, January 27, 2005, March 22, 2004, and March 2, 2004. Their concern is the reference to the property under consideration for rezoning being located on Britt Drive and that the rezoning recommendation is based upon access via Britt Drive. They object to the designation of this private roadway as Britt Drive and to there being access via Britt Drive to the property which is being considered for rezoning. In addition, the rezoning maps show that there is some access to the properties from White Pine Drive, which is a single-family subdivision and certainly not an appropriate access to an industrial district.

Mr. Justus explained that the applicant can develop the property with the Swannanoa Road access only.

At 5:50 p.m., Mayor Bellamy closed the public hearing.

Throughout discussion, Mr. Esselstyn and City Attorney Oast responded to various questions/comments from Council, some being, but are not limited to: if the property is rezoned, can Britt Drive be used as an access; if the property is rezoned, what are the minimum thresholds for development that would trigger review by City Council; and, if any new roads need to be built, would they have to comply with our new standards.

Mayor Bellamy pointed out that our ordinances prohibit access on that sliver of land adjoining White Pine Drive because it's through a residential development; and, a buffer must be provided between whatever use goes on the property and the adjacent residential areas.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Jones moved for the adoption of Ordinance No. 3518, and find that the request is reasonable based on information provided in the staff report and as stated in the staff

recommendation. This motion was seconded by Councilman Mumpower and carried on a 5-2 vote with Councilman Freeborn and Councilman Newman voting "no."

ORDINANCE BOOK NO. 24 - PAGE 113

B. PUBLIC HEARING TO CONSIDER REZONING PROPERTY FOR THE PROJECT KNOWN AS MAIN STREET AT BILTMORE LAKE, LOCATED ON SAND HILL ROAD FROM HIGHWAY BUSINESS DISTRICT TO URBAN VILLAGE DISTRICT AND REVIEW OF THE CONCEPTUAL MASTER PLAN FOR A MIXED-USE DEVELOPMENT

ORDINANCE NO. 3518 - ORDINANCE TO REZONE PROPERTY FOR THE PROJECT KNOWN AS MAIN STREET AT BILTMORE LAKE, LOCATED ON SAND HILL ROAD FROM HIGHWAY BUSINESS DISTRICT TO URBAN VILLAGE DISTRICT AND REVIEW OF THE CONCEPTUAL MASTER PLAN FOR A MIXED-USE DEVELOPMENT

Mayor Bellamy opened the public hearing at 6:00 p.m.

Urban Planner Jessica Bernstein said that this is the consideration of an ordinance to rezone property for the project known as Main Street at Biltmore Lake, located on Sand Hill Road from Highway Business District to Urban Village District and review of the conceptual Master Plan for a mixed use development. This public hearing was advertised on August 10 and 17, 2007.

Ms. Bernstein said that contrary to other review processes where all details are presented up front, the Urban Village rezoning process is initially based upon the conceptual master plan. Many of the final details for the project including landscaping, building design, materials and pedestrian amenities will not be reviewed at this point. Each of the three project phases will be submitted in greater detail and will be carefully reviewed and approved by the Technical Review Committee (TRC) as Level II projects. Once the conceptual master plan (covering general street network, land use configuration, development intensity and structure heights) is reviewed and approved by City Council with recommendation from Planning & Zoning Commission, the project cannot substantially deviate from this guiding plan. Any significant change to the master plan, such as increases to overall development intensity or changing the mix of uses by 25% or more, will require returning to City Council for review and amendment of the master plan.

The current proposal is for a rezoning and approval of a conceptual master plan for over 22 acres at Smoky Park Highway and Sand Hill Road, located in the extraterritorial jurisdiction area. The current zoning of the project area is Highway Business (HB). The property is made up of two parcels, one of which is currently split zoned HB/RM-16, however only the portion of the lot currently zoned HB is included in the proposed rezoning to Urban Village (UV). The project site is currently vacant and was previously graded.

According to the plans submitted, this three-phase project proposes nine buildings containing residential condos, office space and retail uses, including grocery, restaurant and bank uses. There are a total of 424 residential units proposed, creating a density of approximately 19 units per acre. Parking is proposed according to UV district requirements and will be located on-street and in several small surface lots as well as in above and below-ground garages. The structures vary in height from a minimum of three to a maximum of 12-stories, all within the maximum height allowed for the district. The UV requires all structures taller than six stories to be located internally to the site unless the surrounding context supports such height, and on this site the taller buildings are placed along the southern and western edge of the project area where they will be buffered by the cemetery and floodway. However, if these buildings are designed to the maximum height limit (150') the height may be out of context with the surroundings and may impose a negative impact. Specific design elements are required for these taller buildings and

will be reviewed at a later TRC hearing. It should also be noted that a buffer between the site and the adjacent cemetery is not expressly required per the Unified Development Ordinance (UDO); however the applicant is proposing a 30' buffer regardless.

In the UV district, maximum setbacks are defined, but can be modified by City Council. The applicant is seeking modifications to setbacks on 8 of the 9 buildings. The maximum setback in the UV district is 15 feet from the street as measured from the back of curb, however mixed use structures may be setback from the curb up to 25 feet if at least 10 feet in front of the structure incorporates courtyard space offering public amenities. The setback for Building E (max 21') falls within this increased allowance, however the other buildings exceed the 25' allowance as follows:

	Setback from Sand Hill Road	Minimum Plaza Setback (Interior Street)	Max. Plaza Setback (Interior Street)	Exceeds Maximum Setback by:
Bldg A	n/a	32'	51'	**Up to 26'**
Bldg B	**50'**	15'	51'	**Up to 26' internal 25' Sand Hill Rd.**
Bldg C	n/a	15'	65'	**Up to 40'**
Bldg D	**48'**	15'	15'	**n/a internal 23' Sand Hill Rd.**
Bldg E	n/a	15'	21'	**n/a**
Bldg F	n/a	14'	30'	**up to 5'**
Bldg MF1	n/a	14'	37'	**up to 12'**
Bldg MF2	n/a	12'	65'	**up to 40'**
Bldg MF3	n/a	12'	40'	**up to 15'**

The larger setbacks from Sand Hill Road for Buildings B & D reflect an existing significant change in grade from the street level to the finished floor elevation for the structures (up to 28' above street level). The Planning & Zoning Commission approved a variance to eliminate pedestrian interaction on the Sand Hill Road façade of these buildings because of the extreme grade change and the modification to increase setback from that street side is aligned with the effort to work with the existing grade changes and focus pedestrians to the internal side of the buildings. Staff is supportive of these setback modifications.

The larger setbacks from internal streets with incorporation of courtyard/pedestrian amenity spaces do seek to encourage interaction and community within the Urban Village. These courtyard spaces may assist in promoting the vitality of the outdoor element of the development, however in some instances the setback modification could be eliminated through building redesign that would break up the mass of the buildings and bring the corners closer to the street edge (ex. Buildings MF1, MF2, MF3, A).

Design and operational standards can also be varied in the UV district, with the Planning & Zoning Commission hearing and granting the variance request. All structures are required to have an operable pedestrian entrance on each primary façade, however buildings B & D are not proposed to include such an entrance. The applicant believes that the significant grade change along this section of Sand Hill Road is prohibitive to the pedestrian and intends for these buildings to focus and front internally only. This variance was approved by the Planning & Zoning Commission.

The Highway Business District (HB) is established to address the needs of commercial development along major thoroughfares, promoting automobile-oriented development and a wide range of commercial uses. The objective is to minimize the number of access points onto the thoroughfare and to promote shared parking opportunities, thereby enhancing the function of the thoroughfare.

The proposed UV rezoning would promote development similar to HB in that the major thoroughfare will be maintained without much interruption since vehicular circulation occurs internally and structures and parking areas are generally internally-oriented. Higher densities are supported by both zoning types; however there is no limit on structure size in UV, allowing for greater development options than HB. Uses allowed in these districts are similar as well and the advantage of rezoning the area is that UV provides better integration of the uses as well as a cohesive master plan, which creates a better sense of community.

At their June 18, 2007, meeting, the TRC approved this project with the conditions listed in the staff report. The Planning & Zoning Commission reviewed this project on June 12, 2007. They approved the request for rezoning (4-0); the conceptual master plan (4-0) and the variance request for elimination of pedestrian entrances on Sand Hill Road for Buildings B and D (4-0).

At the Planning & Zoning Commission hearing, one member of the public expressed concern that approval of structures at the maximum height allowed in the UV district would set a precedent, thus making structures at full height the "norm." Interim Planning & Development Director commented that each project will be reviewed as a distinct and separate proposal, with surrounding context taking into account in determining appropriate mass and scale for the structures in that project.

Also at this meeting, the applicant expressed that they are amenable to a 10' greenway easement, as requested by the Greenways Commission; that they are interested in voluntary annexation and that they are intending to pursue incorporating sustainable features into the development. Commissioner Weeks asked the applicant to consider including an element of workforce housing, which they agreed to consider.

The conceptual master plan submitted follows the requirements of the UV district by indicating an acceptable street network and land use configuration for this scale of development, as well as suitable open space, building heights, setbacks and amenities.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:

- Infill development of a previously disturbed site locates development in an area where infrastructure already exists, resulting in more efficient use of land.
- Presents a walkable community with services that will benefit and/or complement adjacent uses.
- Project is suitable to support transit (over 8-16 units per acre).
- Provides a variety of uses and buildings similar to a more traditional community.

Cons:

- Significant grade change towards southern end of property (along Sand Hill Road) prohibits street-level pedestrian engagement.
- Some of the building heights proposed are at or near UV maximum (up to 12 stories), which is not often seen outside of the CBD.

Staff recommends approval of the rezoning request of the identified parcels from Highway Business to Urban Village and the adoption of the master plan to guide the

development. Staff also recommends approval of the modifications for setback but that Council considers requiring the applicant to stagger building facades where possible to reduce some of the increased setbacks.

Mr. David Buchanan, representing Forest Lawn Funeral Home and Cemetery, objects to using the right-of-way to the north as access to the mixed used community as they fear it will interfere with the only entrance to the cemetery. He did note that it is already difficult to get out on Sand Hill Road from that access.

At 6:21 p.m., Mayor Bellamy closed the public hearing.

In response to Councilman Mumpower, City Traffic Engineer Ken Putnam said that most of the interaction in and out of the development will be from the main access point across from A-B Technical College and there is a condition that a traffic light should be installed at that location.

Discussion surrounded approval of the master plan at this time which includes all three phases, along with the approval of 3 buildings that may be up to 12 stories.

At the request of Councilwoman Cape and Councilman Newman, Mayor Bellamy said that on August 28, 2007, City Council will be reviewing an amendment to the Unified Development Ordinance regarding the maximum height standards that are applied to the Urban Village District.

Vice-Mayor Jones suggested that if the project moves forward that the developer seek input from the neighborhood.

When Councilman Freeborn seeked conformation (as stated in the Planning & Zoning Commission minutes) that the developer is interested in voluntary annexation and a 10-foot greenway easement, the developer responded that this is part of their project and they have started the process with the Economic Development Director to voluntarily annex, along with providing the 10-foot easement.

Mayor Bellamy noted that we cannot use voluntary annexation as grounds in determining whether to approve a project or not.

Mayor Bellamy urged the developer to use exemplary stormwater and erosion control mitigation measures since Hominy Creek is abutting his property. She also thanked the developer for his willingness to help with the Hominy Creek greenway, as the City has been trying for years to make that happen.

Councilwoman Cape suggested the developer look at energy efficiency measures when designing the buildings.

Regarding the Planning & Zoning Commission granting variances, at the request of Mayor Bellamy, City Attorney Oast said the design and operational standards are covered in Section 11 of the Urban Village ordinance dealing with orientation, entrances, windows and doorways. It permits the Planning & Zoning Commission to sit as a Board of Adjustment in those limited cases and that is specifically allowed by Statute.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3518, rezoning the property from Highway Business District to Urban Village District and to adopt the master plan, finding that the requests are reasonable based on information provided in the staff report and as

stated in the staff recommendation, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; and (5) This project will undergo final review by the TRC prior to issuance of any required permits. This motion was seconded by Councilman Davis and carried unanimously.

ORDINANCE BOOK NO. 24 - PAGE 115

C. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR A HOTEL LOCATED ON MONTE VISTA ROAD FOR DEVELOPMENT OF A 105-ROOM HOTEL

ORDINANCE NO. 3518 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR A HOTEL LOCATED ON MONTE VISTA ROAD FOR DEVELOPMENT OF A 105-ROOM HOTEL

City Clerk Lipe administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 6:37 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Nate Pennington submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Pennington said that this is the consideration of the issuance of a conditional use permit for a hotel located on Monte Vista Road for development of a 105-room hotel.

He said that the applicant is requesting a Conditional Use Permit for a 2.90 acre outparcel located behind the existing Home Depot store to allow for the construction of a 105 unit lodging facility (Attachment to City Exhibit 3 - Aerial Map). The applicant is currently in the process of subdividing the outparcel from the 20.79 acre parent parcel. The request is an amendment to the master plan and associated conditional use permit for the Home Depot store approved by City Council on February 22, 2000.

The subject site is located on Monte Vista Road in West Asheville. The property presently consists of one lot zoned Highway Business. The subject site is bounded to the north by Interstate 40 and associated right-of-way, to the south by Monte Vista Road, single-family residences, a duplex and medical office zoned HB, RM-6 and Office II respectively, to the east by

Home Depot, Acton Circle, restaurants and lodging facilities, and to the west by a single-family residence all zoned HB (Attachments to City Exhibit 3 - Site Plan and Value Place Hotel Faces).

The Highway Business District is established to address the needs of commercial development along major thoroughfares. Automobile oriented development is prevalent within this district and a wide range of commercial uses is permitted. Due to the dominance of the automobile, a major objective within this district is to preserve the traffic capacity of the thoroughfare. This is attempted through minimizing the number of access points onto the thoroughfare, encouraging zero-lot line development, and promoting shared parking and access between adjacent businesses. Development which enhances the function of the thoroughfare and is sensitive to the appearance of the corridor is essential within the district. These major corridors are the gateways to Asheville and often define the first image of the city.

A number of conditions were imposed on the development of the potential outparcels surrounding the Home Depot store when it was approved by City Council in 2000. The conditions affecting the Value Place hotel site can be summarized as follows:

1. The outparcel behind The Home Depot store shall be limited to one (1) driveway on Monte Vista Road. **One curb cut along Monte Vista Road is being proposed.**
2. A revised Traffic Impact Analysis and compliance with its recommendations shall be required at the time of development of any of the sites identified as future outparcels. **The revised Traffic Impact Analysis (TIA) has been submitted to and approved by the City Traffic Engineer.**
3. Parking shall be provided at the side or rear of structures and not closer to the street than the edge of the structure. **Parking has been indicated along the sides and rear of the proposed structure.**
4. Buildings shall be oriented to face the street and shall have customer entrance(s) on the wall facing the street. **A customer entrance fronting Monte Vista Road has been provided.**
5. Landscaped areas shown on the landscape plans shall not be altered or removed except the minimum extent necessary to accommodate the driveway along Monte Vista Road. Landscaping altered or removed shall be replaced with landscaping of an equal or greater extent as the landscaping that is removed elsewhere on the individual site or sites as determined by the Planning and Development Director. **The majority of the outparcel proposed for the construction of the hotel is scarified with the exception of some vegetation along the western perimeter. Three small areas of vegetation are proposed to be removed internal to the site in order to accommodate the construction of the hotel parking lot. The landscaped area adjacent to the rear of the Home Depot is to remain intact, street trees will be planted along Monte Vista Road and a 30 foot wide type "B" buffer will be installed to complement the existing vegetation along the western perimeter of the property.**

At their July 2, 2007, meeting the Technical Review Committee (TRC) approved this project subject to conditions.

As of the time of this writing, staff has received no communication from adjacent property owners or other citizens concerning the proposed development. The applicant held an independent neighborhood meeting in the area on May 30, 2007.

City Council must take formal action as set forth in Section 7-5-5(e)(3) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of the case pursuant to Section 7-16-2(c) of the UDO. Staff's review indicates that all seven standards are met as proposed in the site plan.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   This has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and all other applicable laws and standards that protect the public health and safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
   The hotel and parking lot are proposed to be built on land that was previously used as a waste fill area for the construction of the Home Depot store. The land is relatively flat because of previous disturbance and will require relatively minimal amounts of grading for the construction of the project.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
   The proposed development of a lodging facility would integrate within the existing commercial node of the Home Depot store, lodging facilities, offices and restaurants in the immediate area. Staff feels that the proposed project would have no discernible effect on surrounding property values.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
   There are a variety of commercial developments in the area that would be consistent with the proposed development. Furthermore, the western portion of the property will be buffered by a type "B" landscape buffer, mitigating the impact on the adjacent single-family structure.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
   The application of compatible infill growth supports several goals and objectives as described in both ***The Asheville City Development Plan 2025*** and the ***Strategic Operating Plan*** (See **Compliance with Comprehensive Plan** and **Strategic Operating Plan Considerations** in above staff report).

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
   The proposed development is located near transportation facilities and other utilities appear adequate. The initial technical review by other technical agencies and utility providers has not revealed any problems for serving the use.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
   A revised traffic impact analysis (TIA) was submitted, reviewed and approved by the City Traffic Engineer. The proposed project is not expected to cause undue traffic congestion or create a traffic hazard.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:

- Provides another opportunity to further the City's goal of compatible infill growth.
- The addition of the hotel will provide additional employment opportunities within the City limits.

Con:

- Some citizens may perceive this as allowing larger scale commercial development closer to residential areas.

Staff recommends approval of the proposed project and Conditional Use Permit subject to the conditions in the TRC staff report and those listed as follows: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (3) The building design, construction materials, and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; (4) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (5) All signage must comply with the City's standards fro on-premise signage set forth in Article XIII of the UDO; and (6) This project will undergo final review by the TRC prior to issuance of any required permits.

After rebuttal, Mayor Bellamy closed the public hearing at 6:43 p.m.

Councilwoman Cape encouraged people who prepare master plans to think about shared parking spaces.

In response to Councilwoman Cape, Mr. Pennington explained the buffers (Attachment to City Exhibit 3 - Image). In addition, Mr. Pennington said that due to the elevation between this site and the Home Depot internal connectivity is difficult.

Councilman Mumpower moved for the adoption of Ordinance No. 3514, granting a conditional use permit for a hotel located on Monte Vista Road for development of a 105-room hotel, subject to the conditions recommended by City staff and find that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (3) The building design, construction materials, and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; (4) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (5) All signage must comply with the City's standards fro on-premise signage set forth in Article XIII of the UDO; and (6) This project will undergo final review by the TRC prior to issuance of any required permits. This motion was seconded by Vice-Mayor Jones and carried unanimously.

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D. PUBLIC HEARING TO CONSIDER PERMANENTLY CLOSING STEVENS STREET

RESOLUTION NO. 07-160- RESOLUTION TO PERMANENTLY CLOSE STEVENS STREET

Mayor Bellamy opened the public hearing at 6:47 p.m.

Assistant Public Works Director Richard Grant said that this is the consideration of a resolution to permanently close Stevens Street. This public hearing was advertised on July 27, August 2, 10 and 17, 2007.

N. C. Gen. Stat. sec. 160-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, Patsy Brison, on behalf of B. Fletcher Carter, has requested the City of Asheville permanently close Stevens Street. This street formerly intersected with Fairview Road and was removed during the construction of the new Bleachery Boulevard. Public Works Department staff has determined that Stevens Street still remains on the City maintained streets listing.

Public Works staff have researched and contacted all agencies and determined easements are required for PSNC Energy and The Metropolitan Sewage District for existing infrastructure.

Pro: The closure will legally remove the street from the Buncombe County tax records and also allow the City to remove the street from the maintenance list.

Con: Staff can find no potential challenges regarding the closure of Stevens Street.

City staff recommends adoption of the resolution to permanently close Stevens Street.

Ms. Patsy Brison, attorney representing the adjacent property owners, urged Council to close Stevens Street. She asked that if the City has any information on the location of the easements that would be helpful.

Mayor Bellamy closed the public hearing at 6:50 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the resolution and it would not be read.

Vice-Mayor Jones moved for the adoption of Resolution No. 07-160. This motion was seconded by Councilwoman Cape and carried unanimously.

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At 6:50 p.m., Mayor Bellamy announced a 20 minute break.

V. UNFINISHED BUSINESS:

A. **ORDINANCE NO. 3519 - ORDINANCE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES PERTAINING TO ENVIRONMENTAL PROTECTION STANDARDS (STORMWATER AND EROSION CONTROL)**

ORDINANCE NO. 3521 - ORDINANCE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES PERTAINING TO ENVIRONMENTAL PROTECTION STANDARDS (DEFINITIONS)

ORDINANCE NO. 3521 - ORDINANCE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES PERTAINING TO ENVIRONMENTAL PROTECTION STANDARDS (ENFORCEMENT)

ORDINANCE NO. 3523 - BUDGET AMENDMENT FOR ADDITIONAL STAFF TO INCREASE ENFORCEMENT EFFORTS AND PROVIDE ON CALL SERVICES

Mayor Bellamy said that this public hearing was held on June 26, 2007, and continued to July 24, 2007, and then to this date.

Director of Transportation and Engineer Cathy Ball recommended that City Council review and approve the revisions to the Stormwater and Erosion Control Ordinance and Penalties and Violations (Section 7-18-2) as recommended by the Watershed Policy Committee, Planning and Zoning Commission and City staff. Additionally, staff requests that the Definitions (Section 7-2-5) of the Unified Development Ordinance (UDO) be amended to reflect the revised ordinance.

Staff also requests that Council adopt a budget amendment in the amount of $215,000 for four additional staff to increase enforcement efforts and providing on call services 24/7.

As part of the Environmental Protection Agency's Federal Stormwater Regulations, the City of Asheville is required to meet six minimum measures in efforts to improve water quality from stormwater runoff. These measures include public education, public involvement, illicit discharge regulations, construction site and post-construction site measures and good housekeeping measures. In order to be incompliance with the Federal regulations, the City of Asheville must revise the Stormwater and Erosion Control Ordinance in the Unified Development Ordinance (UDO) by July 1, 2007.

In an effort to make the ordinance more consistent and user-friendly, we recommend combining the Stormwater Ordinance and Erosion Control Ordinance into one ordinance.

A stakeholders group was formed called the Watershed Policy Committee to review and evaluate the proposed ordinance. Several members were invited to participate in this process. Due to scheduling conflicts not all members were able to attend. The active group consisted of the following people:

• Barber Melton	Coalition of Asheville Neighborhoods
• Starr Silvis	NC DENR
• David Herbert	Property Owner
• Jeff Van Hartesfeld	Crowfields Condominiums
• John Broadbrooks	Landscape Architect
• Jeff Slosman	Manufactures Association
• Bruce Tompkins	Biltmore Village
• Hartwell Carson	RiverLink
• Mike Goodson	Buncombe County

At the June 6, 2007, Planning and Zoning Commission Meeting, the Commission approved the recommended changes, with a recommended buffer width of 50 feet on all streams mapped on the USGS topographic maps. Staff presented the report at the Planning and Zoning Commission at 10:00 p.m. after a lengthy meeting. Since this meeting, the Planning and Zoning Commission has expressed some concern about their recommendation on the buffers.

Staff has met with various community groups over the past two months. These groups have included the Council of Independent Business Owners, the Coalition of Asheville Neighborhoods and a joint group of the North Carolina Home Builders Association and the Asheville Board of Realtors. Staff held public meetings on July 19, August 9, 13 and 14 to answer questions and obtain input of the revisions to the ordinance.

The stakeholders reviewed thirteen critical elements. Of the thirteen elements, three issues had more concerns and comments from the public. A matrix shows how staff's recommendations to these items correspond to the current ordinances and the state minimum requirements. Please note that the stakeholders' recommendation was the same as the staff on all items except for buffer widths.

Buffers

The majority of concerns from the public are about the additional twenty foot buffer above and beyond the thirty foot buffer the State is requiring. Based on technical research, a minimum of fifty foot buffer is recommended to improve water quality.

By far, the issue of buffers was the most concerning to the people who spoke at the public meetings. Most felt that the City should not require an additional buffer above and beyond the State minimum of 30 feet.

Option - Research shows that as the width of a buffer increases the benefit does not increase linearly. In other words, at a certain point "break point" the increase in removal efficiency significantly decreases for each foot the buffer width is increased. This break point varies greatly for different pollutants, types of ground cover, slope steepness, etc. When determining the minimum widths the break points for the specific pollutant removals we were targeting were considered.

The bottom line is that we will gain a great deal of benefit from implementing the thirty foot buffer required by the state. Council may elect to implement the minimum required by the state and allow staff to study the impact over the next twenty-four months.

Inspection

Staff is recommending that prior to approving a grading and stormwater permit for sites greater with more than 10,000 square feet of disturbed area; the applicant would be required to show proof that a licensed professional will be providing weekly or biweekly inspections on sites.

Enforcement

The state erosion control statute allows for a maximum fine of $5,000 per day. The City's current ordinance limits the fines to $500 per day. Staff is recommending that the maximum fine be increased to the state's maximum. Staff recommends a schedule be adopted to determine the fines for various violations.

We have not established a budget for the revenue we will generate from the fines and enforcement. Our goal is to encourage compliance, thus minimizing the amount of revenue we collect.

Following the most recent rainfalls, Council requested that we reevaluate our staffing needs in order to address some of the major sediment erosion that occurred. During this evaluation we identified four major causes of sediment erosion from construction sites.

1. Poor design.
2. Inaccurate or failure to install erosion control measures.
3. Failure to maintain erosion control measures.
4. Limited inspection program.

The revised ordinance should address most of these problems with the exception of staffing. We currently have five construction inspectors that cover driveway aprons, street cuts,

waterline installations, stormwater and erosion control measures. We have approximately 600 active grading sites in the City and extraterritorial jurisdictional area.

We would recommend adding two additional construction inspectors, one administrative assistant and one plan reviewer. The cost for these positions is approximately $150,000 plus benefits. We would need a capital outlay for the first year of approximately $45,000 for vehicles and computers. Additionally, we would request $20,000 per year for overtime costs associated with providing on-call services 24/7. We are also recommending that the $215,000 to implement additional enforcement would come from fund balance.

Pros:

- The implementation of these regulations will improve water quality.
- The Stormwater and Erosion Control Ordinances have been consolidated. This should make the ordinance more user-friendly.
- These changes meet the goals and objectives of the 2025 plan.
- The City of Asheville will be in compliance with the Federal Stormwater Mandate and the North Carolina Sediment and Erosion Control Law.

Con:

- In some cases, these changes will increase development costs.

Pros and Cons:

- Ordinance provides for increased fines and penalties.
- Staff is recommending an additional buffer width of 20 feet.

Staff requests that the City Council approve the revisions to the Stormwater and Erosion Control Ordinance and Penalties and Violations (Section 7-18-2) as recommended by the Watershed Policy Committee, Planning and Zoning Commission and City staff. Additionally, staff requests that the Definitions (Section 7-2-5) of the UDO be amended to reflect the revised ordinance.

Staff also requests that Council adopt a budget amendment in the amount of $215,000 for four additional staff to increase enforcement efforts and providing on call services 24/7.

Ms. Ball reviewed with Council the following via PowerPoint presentation:

"Why are we at the point we are at today? (1) Unfunded mandate - Environmental Protection Agency, Phase II - Stormwater Regulations - Local government over 50,000 in population or density of over 1,000 per square mile; and (2) improve/sustain water quality.

How did we get here? (1) Watershed Policy Committee began in May of 2006 with 25 community representatives; (2) staff/consultant developed a draft document from July 2006 - January 2007; (3) staffing issues - January 2007 - April 2007; requested extension which was denied by the State; (4) reassembled stakeholders in June of 2007 with community presentations; and (5) public meeting on July and August 2007.

What are we doing? (1) aquatic buffers; (2) constructing slopes; (3) bonding; (4) establishing ground cover; (5) permitting borrow and waste areas; (6) design criteria for erosion control and stormwater; (7) maintenance and inspection requirements; and (8) enforcement and penalties. Ninety-percent of the comments were about (1) aquatic buffers; (2) maintenance and inspection requirements; and (3) enforcement and penalties.

On each discussion element she explained the current city ordinances, the state minimum requirement, along with the staff and stakeholder recommendations, using charts for illustration purposes:

1 - A. Aquatic Buffers - Undisturbed Areas - 30 ft minimum undisturbed for all jurisdictional waters with an additional 20 ft with limited or managed disturbance. If state requirement would require a wider buffer, state requirement would be administered.

1 - B. Aquatic Buffers - Build Upon Area Setback - 30 ft minimum built upon area setback for all jurisdictional waters with an additional 20 ft with limited built upon area.

2. Constructed Slopes - Requires Slope Stability Certificate for all slopes greater than 2:1. Requires geo-technical reports for slopes constructed to support roadways. Setback of slopes from property lines and rights-of-way to protect adjacent properties.

3. Land Disturbing Allowances - Limit disturbing 5 acres or less at any one time on for all properties with slopes of greater than 15%. Limit 20 acres of at one time disturbance in High Quality Water Zones. Requires bond for re-vegetation if disturbing 1 acre or more.

4. Ground Cover - Ground cover required within 14 calendar days of completion of construction activity.

5. Borrow and Waste Areas - Requires Cut and Fill Calculations. Requires proof of additional permit for all Borrow or Waste sites. Even if same owner.

6. Design Storms for Erosion Control - 10 year - 24 hour storm design. Ability to require 25 year if necessary.

7. Application and Exemptions for Stormwater Management - Combination of the existing requirements for impervious surface coverage and state requirement. Excludes 1 and 2 family home development from the impervious provision.

8. Post-Construction Stormwater Quantity Controls - 2-year and 10-year - 24-hour storm event detained to pre-construction peak rates. The 2-year must be slow release to provide infiltration and volume reduction.

9. Post-Construction Stormwater Quality Controls - Low Impact (less than 24% impervious surface) - Not included in recommendation.

10. Post-Construction Stormwater Quality Controls - High Impact (24% impervious surface or more) - Same as state minimum.

11. Regional Stormwater Management - None.

12. Required Self-Inspections - Required licensed professional under the direction of a licensed professional to provide weekly or bi-weekly inspections.

13. Enforcement - Notice of Violation: Immediate fines given for some violations up to $5,000. Other Violations - give time for cure. If violation is not cured: Maximum fine of $500 per day per violation; stop-inspections placed on project; grading and stormwater permit suspended or revoked.

Technical document handouts on buffer facts and width studies are available. There are links to Asheville's FTP site and other useful links.

There are buffer exceptions: (1) taking of property (a) defined by state; and (b) staff decision; (2) no practical alternatives (a) defined by state; and (b) staff decision; and (3) hardship (a) defined in UDO; (b) defined by state; and (c) Board of Adjustment.

There are over 200 miles of streams affected. With a 30-foot buffer, it affects 1,500 acres. With a 50 foot buffer, it affects 2,500 acres.

Regarding inspections, (1) developer must show proof of contract with licensed professional during construction phase; (2) weekly inspection reports - steep slopes; (3) bi-weekly inspection reports - other; and (4) staff perform follow-up inspections.

She then reviewed the enforcement chart. Step One - Notice of violation and/or fine. Step Two - Fine for ongoing violation and suspend permit - Issue "No Inspection Notice" through Building Permit Office. Step Three - Fine for ongoing violation - Revoke permit (applicant must apply for a new permit). Step Four - Immediate fine - Stop Work Order.

Problems and solutions consist of (1) poor design - designers get involved in the construction phase; (2) inaccurate or failure to install measures - fine and/or violation; (3) failure to maintain measures - fine and/or violation; and (4) limited inspection program - increase inspection program.

Inspection Program improvements consist of (1) increase staffing - $230,000 annually (includes benefits and equipment); (2) provide 24/7 services - $20,000 annually; and (3) contracts with design professionals - nor applicable."

Mr. Ben Pace was in favor of good development and reasonable regulations; however, he felt that the 50-foot regulation on streams is unreasonable. In fact, even the 30-foot buffer is too much. He felt the buffer regulations will hurt small businesses for several reasons, some being, that they cannot afford the studies that will be required and the ordinance is complicated to understand.

Mr. David Herbert spoke in support of the ordinance as proposed by City staff.

Mr. Pete Hildebrand questioned if the buffer restrictions will result in loss of property market value. He felt that individual land owners with streams running through them should have been notified of this potential restriction. If you overlay the FEMA flood maps with buffers proposed, that may not be a problem. But if you overlay the buffer maps with the FEMA and zoning setbacks, that may be a problem. That question should be answered. If Council adopts the state minimums, then staff could notify the property owners who could be potentially impacted by this to see if there are additional concerns.

Dr. Sandra Brown explained that concerning buffers, one size does not fit all situations. She was concerned that (1) the stormwater and erosion control ordinance title is misleading in that the emphasis on buffers is not automatically evident; (2) inadequate notification to all stakeholders who will be impacted; and (3) haste and poor notification that result in taking away property rights of all surface water land owners. She suggested (1) state clearing in writing that the stormwater and erosion control ordinance pertain only to those who are building/developing and rebuilding/redeveloping their property and such development is to adhere strictly to the existing state buffer mandate of 30-feet; (2) identify and notify all property owners with surface water in and around the Asheville area and inform them about the ramifications of this ordinance that incorporate the intent to extend buffers beyond the state requirements which involves land seizure without consent; and (3) withdraw the 20-foot buffer expansion at this time and find a more constructive approach by working together with the surface water property owners to identify, develop and implement agreeable solutions in keeping our water cleaner.

Ms. Deborah Squier spoke about how the buffer expansion will severely erode the market value of old Asheville neighborhoods. Rather than penalizing property owners, through the buffer requirement, the City should look at the real culprit of runoff from poor drainage.

Ms. Jane Hildebrand felt that the property owners were overlooked or ignored when the stakeholders were selected for the Watershed Policy Committee.

Ms. Michelle Wood explained how a lot of regulation diminishes affordable housing. She suggested Council adopt the 30-foot state minimum standard and then talk about going to 50-feet. She didn't want to see any additional ordinances that restrict the use of land for owners that might lose property value or developers or other persons who can't put as many homes on a parcel due to the other ordinances, in conjunction with this one. Since there are many changes to the ordinance, she suggested Council send the ordinance back to the Planning & Zoning Commission for review.

Mr. James Hildebrand, resident at 38 Spring Cove Road, said that this is a complex issue, but over 15 months they have had a problem with runoff. His home is a perfect example of why we need stronger ordinances and stiffer penalties. He urged Council to adopt the ordinance, specifically as it relates to large developers.

Rev. Christopher Chiaronmonte felt Council should adopt the state minimum of 30-foot buffers and give property owners an incentive to get the other 20-feet.

Mr. Hartwell Carson spoke in support of the ordinance. This is an issue of property rights - no one should have the right to pollute our waterways to harm fish and wild life and affect downstream property owners with runoff and the increased amount of velocity of water that results from most area developments in our mountain region. Sedimentation is the number one polluter in Asheville and the French Broad Watershed. After every rain, our rivers and aquatic life are choked with sediment and runoff from inaccurate erosion control measures on developments. One of the most effective, but contentious, tools to reduce the amount of sediment that reaches our streams and rivers are buffers. There is significant research that supports that. There is a comprehensive body of research that states the need for 100-600 foot buffers on either sides of a stream to fully realize the benefit of buffers. Fifty-feet is the absolutely bare minimum that is needed to protect waterways and private and public property. Over 35 cities in North Carolina have adopted the 50-foot buffer. The 50-foot buffer is the minimum standard that is needed and because our steep topography it is crucial that City Council adopt at least a 50-foot buffer to protect all of our streams and all of our properties.

Mr. Paul Zurick, speaking on behalf of the Asheville Area Chamber of Commerce, felt the Chamber should have been involved in a stakeholders group. We are in favor of good regulations, but regulation that doesn't achieve the purposes it seeks at a reasonable costs doesn't result in responsible development. There are a number of additional costs imposed by the city over the state. He summarized the additional costs imposed by proposed City regulations that exceed state requirements: (1) loss of land in Zone B (20 additional feet lost on each side of a blue line stream); (2) periodic inspections of constructed severe slopes within existing or future public rights-of-way; (3) additional setbacks of constructed slopes from adjacent property and ROW boundaries; (4) re-vegetation bond prior to land disturbance; (5) inefficiency cost of 5-acre grading limit; (6) requiring "stamped" as-built drawings of disturbed areas prior to final inspection approval; (7) require borrow/waste calculations and proof of approved borrow/waste sites prior to land disturbance permit issuance; (8) imposing the same requirements on low density developments as on high density developments (state has lower standards for low density development); (9) periodic inspection by licensed engineer of erosion control measures during construction; and (10) immediate fines exceed minimum state standards.

Mr. Joe Bassett urged Council to adopt the 50-feet buffer as a minimum, along with stricter penalties.

Ms. Esther Manheimer, attorney representing the Council of Independent Business Owners, requested Council remand the ordinance back to the Planning & Zoning Commission for additional time to analyze and study the ordinance. She presented Council with a letter dated August 21, 2007, detailing the following concerns (1) time is not of the essence - the N.C. Dept. of Environment and Natural Resources (DENR) is not interested in beginning the fining process especially for those cities that are earnestly undertaking the ordinance revision process; (2) Unwise combination of stormwater and erosion regulations - the coupling of these two extremely complicated areas of regulation is confusing and unnecessary and the exemptions from both clearly listed in the separate ordinances; (3) changes to the proposed ordinance must be reviewed by the Planning & Zoning Commission - since being reviewed by the Planning & Zoning Commission, the ordinance has been further edited; (4) variations from state law - (a) there is no state or federal requirement that the ordinance contain a 50-foot buffer restriction - the state law refers to a 30-foot buffer and to arbitrarily enlarge this buffer is hasty and without bias; (b) state law excludes "redevelopment" from stormwater regulations and defines "redevelopment as any land-disturbing activity that does not result in a net increase in built-upon area and that provides greater or equal stormwater control than the previous development." On the other hand, this proposed ordinance only excludes redevelopment from the water quantity control provisions as long as it has a net reduction in impervious surface area. The proposed ordinance will require redevelopment of commercial structures on land of more than one acre to abide by the buffering requirements; (c) state law excludes all projects, whether commercial or residential, from stormwater regulations that do not disturb one acre or more (projects disturbing less than one acre that are part of a larger common plan of development are regulated). The proposed ordinance only excludes projects under one acre if they have an impervious surface area of 50% or less of the total acreage. However, single one or two family dwellings are exempt; regardless of the impervious surface area, if less than one acre is disturbed. This exemption is confusing; (d) When referring to the buffer restrictions, the state law restricts development 30 feet "landward" of surface waters while the proposed ordinance restricts development from the "top of the bank." This is confusing and unnecessary; (e) state law states that an exemption to the stormwater regulations shall be granted under certain circumstances including situations where there is a lack of practical alternatives for road crossing. No such exemption exists under the proposed ordinance; and (f) the UDO and the state define land disturbing activity differently - the difference being the City's inclusion of tree cutting in the definition of land disturbing.

Ms. Patsy Brison, representing Mike and Kathy Verble, presented Council with a letter dated August 21, 2007, and a letter from the Verble's to Stormwater Services Manager Chad Pierce dated February 1, 2007. She explained how their property is greatly affected by Dingle Creek and the feeder creeks into Dingle Creek and is flooded during heavy rain storms. She urged Council (1) to adopt the new stormwater and erosion control ordinance with the 50-foot buffer requirement; (2) no grading be allowed without an approved development plan in all zoning districts which would require a revision to the proposed subsection 7-12-2 (f) (5); and (3) that stormwater designs be required to meet a 25-year storm in the Dingle Creek and feeder creek areas, along with other areas likely to flood during heavy rain events.

Ms. Heather Rayburn, representing Mountain Voices Alliance, urged Council to adopt the proposed ordinance with the 50-feet buffer, and consider at a later time to raise the requirement to 100-feet.

Mr. Karl Koon said that this is a very difficult and confusing ordinance to read and try to understand. His concerns are (1) the proposed buffering requirements become applicable when a parcel containing land within 50 feet of a jurisdictional stream or waterway undergoes a "substantial improvement" as defined by the UDO. Substantial improvement is defined as "repair, renovation, addition or improvement that equals or exceeds 50% of the fair market value of the structure before the start of construction." He has been advised by staff that the destruction or damage to a structure by a flood or fire would not be considered a substantial improvement regardless of the cost and the buffering requirements would not then become applicable to the

reconstruction on the original footprint. He can find no reference in the ordinance that spells out this exemption to the buffering requirements and would request that it be specifically allowed in the ordinance; (2) There are two areas where the buffering requirements are covered - Section 7-12-2 (f) (2) (a) dealing with land disturbing activities within aquatic buffers and Section 7-12-2 (g) (2) (d) dealing with built upon areas within aquatic buffers. He requested the same language that appears in Section 7-12-2 (f) (2) (a) (1) (the Undisturbed Buffer Zone regarding the granting of exceptions as allowed in Section 7-12-2- (g) (2) (d) (4)) be included in the Managed Buffer Zone of Section 7-12-2- (f) (2) (a) (2). This will provide the assurance that the same exceptions allowed in the Undisturbed Buffer Zone is extended to the Managed Buffer Zone; and (3) as to the buffering requirements and more specifically the Undisturbed Buffer Zone as they may relate to the future construction or major renovation of parks, recreational facilities or golf courses. Will water features or water hazards become a thing of the past as the public is forced off of the banks of streams, lakes and rivers to provide for the buffers as required by this ordinance. He asked the ordinance be remanded back to the Planning & Zoning Commission for further study, public involvement and recommendation. He felt that the extent of the streams and waterways that this ordinance will govern has not been fully explained. Staff has calculated that there exists approximately 200 miles of jurisdictional streams to which the ordinance would be applied. With a 50-foot buffer on each side of the stream, the potential acreage to be impacted is in excess of 2,400 acres. Some have advocated a 300-foot buffer on both sides, which calculates to over 14,500 acres or 23 square miles. The City of Asheville occupies just over 41 square miles.

Mr. Eric Gorny felt the buffers are an injustice and the ordinance will punish everyone who lives along the 200 miles of river. He encouraged Council to remand the ordinance back to the Planning & Zoning Commission. This will be a seizure of property without just compensation. There needs to be adequate public notification and involvement.

Mr. Danny Lack urged Council to remand the matter back to the Planning & Zoning Commission for more public input. He felt the ordinance does not offer protection for the people who only have a stream in their yard. He supported strengthening the penalties for people who actually cause the problem and leave the people who don't cause the problem alone.

Ms. Cindy Weeks, representative of Mountain Housing Opportunities, explained a concern with the 50-foot buffer area on one of their proposed developments. She urged Council to adopt the 30-foot state minimum buffer.

Mr. Alan Shepherd felt that to adopt the 50-foot buffer would further decrease the amount of buildable land in the City. He urged Council to adopt the 30-foot state minimum buffer.

Ms. Barber Melton, Vice-President of the Coalition of Asheville Neighborhoods, said that a 300-foot buffer is what it will take to clean up our waterways. She would settle for a 50-foot buffer with hopes of raising that in the future. We desperately need this in our community and urged Council to take action now.

Mr. John Carroll urged Council to look at the impact of the ordinance would have on homeowners' property rights and housing in Asheville. A 50-foot buffer will ultimately force more people into substandard housing and farther out of Asheville. He recommended Council remand the matter back to the Planning & Zoning Commission for further consideration and notify all the people that would be materially affected by the ordinance.

Mr. Jerry Sternberg was outraged by the process and the final ordinance. The City did not adequately notify affected property owners that their properties were in jeopardy. He explained how the public process was rushed through. He felt the ordinance should be sent back to the Planning & Zoning Commission for thorough and fair observation.

Mr. Mike Fryar spoke in support of the state minimum of a 30-foot buffer.

Mr. Harmon Ingle spoke about how the proposed 50-foot buffer requirement will affect the average people. He spoke in support of the 30-foot state buffer minimum.

Ms. Maureen Flag-Weber felt that what we need is enforcement of existing laws. She supported the 30-foot state buffer minimum.

Ms. Debbie Rhodarmer felt this takes people's property away without just compensation.

Ms. Kitzy Bocook felt that adoption of the ordinance is a taking of property value without compensation.

Councilman Freeborn moved to (1) adopt the Stormwater and Erosion Control Ordinance, as recommended by the Watershed Policy Committee, Planning and Zoning Commission and City staff (with the 50-foot buffer); (2) adopt the Penalties and Violations (Section 7-18-2) as recommended by the Watershed Policy Committee, Planning and Zoning Commission and City staff; and (3) adopt the ordinance amending the Definitions (Section 7-2-5) of the Unified Development Ordinance (UDO) to reflect the revised ordinance. Said motion died for lack of a second.

Councilman Mumpower felt it's easier for us to make rules than enforce the ones that we have. We need to fix our neglected stormwater system. We should be making a stronger effort to take some of the tax money created through development and re-invest in our stormwater system. He felt we are regulating ourselves to death and adding expense to housing and at risk for creating an elite or gated community. The urgency should be around this body making a more substantial effort to fund and support enforcement of our existing laws and not urgency to adopt an ordinance that has demonstrated flaws. He moved to refer this back to City staff and the Planning & Zoning Commission for further consideration and that we establish an agenda item for a near council meeting whereby we ask staff to come to us with a proposal to strengthen our enforcement capacity with our existing ordinances. This motion was seconded by Councilman Davis.

Councilwoman Cape felt we need to have a conversation about developing a better process by which we can vent these things in a way that everyone feels included and do that up front. She would be supportive of more work on the stormwater and erosion control ordinance but felt we needed to move forward today with the ordinance dealing with enforcement and put the fines and penalties in place. She asked Councilman Mumpower if he would accept that as a friendly amendment.

Councilman Mumpower did not accept Councilwoman Cape's friendly amendment in that we don't have the staff or the will to enforce the existing ordinance structure.

Councilwoman Cape said that there are a lot of pieces that still need to be explored with a full stakeholder engagement in this process. She believes in water quality, but also believes in overall environmental balance and protection. She hoped that we will evaluate our development in terms of transecting out what works well where and knowing how we are going to do that in the right places to get the overall benefits.

Councilman Davis very much enjoys the river and appreciates the resource. He thinks it is too extreme to move from the state's 30-foot buffer to a 50-foot buffer with so many unanswered questions that still exist. He withdrew his second to Councilman Mumpower's motion because he too felt enforcement is very important and would support moving forward with the enforcement ordinance. Regarding the stormwater and erosion control ordinance, he would support remanding that back to the Planning & Zoning Commission. After seeing the pictures of stormwater runoff, he is concerned that we are charging people a stormwater fee and we don't do a good job of providing the infrastructure to fix our system. He felt that if we implement the 30-foot buffer, we can monitor it, enforce our laws and if we have to revisit the issue, we will.

Councilman Newman moved to adopt the Penalties and Violations (Section 7-18-2) Ordinance as recommended by the Watershed Policy Committee, Planning and Zoning Commission and City staff. This motion was seconded by Vice-Mayor Jones.

Assistant City Attorney Martha McGlohon explained that because we have combined the stormwater ordinance and erosion control ordinance (which combined ordinance includes the enforcement provisions), if we don't adopt the combined stormwater and erosion control ordinance, then we have no authority to impose the maximum civil penalty of $25,000. The enforcement ordinance is dependent upon the regulation ordinance.

If legally permissible, Councilman Newman re-stated his motion to (1) adopt the Penalties and Violations Ordinance (Section 7-18-2) as recommended by the Watershed Policy Committee, Planning and Zoning Commission and City staff; and (2) adopt the budget amendment in the amount of $215,000 for four additional staff to increase enforcement efforts and providing on call services 24/7.

Ms. McGlohon said that since the enforcement (penalties and violations ordinance) ordinance is dependent upon the regulation (stormwater and erosion control ordinance) ordinance, in order to adopt the enforcement ordinance, without adopting the combined stormwater and erosion control ordinance, staff would have to revise the enforcement ordinance and bring it back to Council at another meeting.

Ms. Ball suggested Council approve the stormwater and erosion control ordinance with the exception of not increasing the additional buffer width - of just doing the state 30-foot buffer. That would take care of us from the matter of having the compliance issue with the state.

Councilman Newman said there have been a lot of fairly detail oriented comments about the overall ordinance and he would appreciate the chance for the Planning & Zoning Commission to review those comments. That would be his only concern of proceeding in the manner suggested by Ms. Ball. If we just need to wait one week for the enforcement ordinance to be revised, that would not be a concern, but he doesn't want to have to wait several weeks while some of the questions are resolved.

In response to Councilman Mumpower on how much time staff will need to come back to Council with a recommendation package on creating enforcement of existing ordinances, Ms. Ball said that we would take our current existing ordinance and amend it to allow for the enforcement. She felt that would take staff at least 3-4 weeks.

Mayor Bellamy said that the main thing she has heard is that infrastructure is a problem and enforcement. Per the staff's report, the major causes of failures in what we currently have on the ground are (1) poor design; (2) inaccurate or failure to install erosion control measures; (3) failure to maintain erosion control measures; and (4) limited inspection program. That tells her that Engineering needs more staff in that we currently have 5 construction inspectors to deal with approximately 600 grading sites in the City and in the extraterritorial jurisdiction area. It stands to reason that we should begin the process of hiring the people via adoption of the budget amendment today.

Mayor Bellamy said that members of Council have been previously furnished with copies of the ordinances and they will not be read.

Councilman Newman moved rescind his prior motion and in its place he moved to (1) adopt Ordinance No. 3520, the Stormwater and Erosion Control Ordinance, with the 30-foot buffer (not the recommended 50-foot buffer); (2) ask the Planning & Zoning Commission to specifically advise us on the buffer question as well as recommend any other technical changes they would like for Council to consider; (3) adopt Ordinance No. 3522, the Penalties and

Violations (Section 7-18-2) as recommended by the Watershed Policy Committee, Planning and Zoning Commission and City staff; and (4) adopt Ordinance No.3521, amending the Definitions (Section 7-2-5) of the Unified Development Ordinance (UDO) to reflect the revised ordinance. This motion was seconded by Councilwoman Cape and carried on a 5-2 vote, with Vice-Mayor Jones and Councilman Mumpower voting "no."

STORMWATER & EROSION CONTROL ORDINANCE -
ORDINANCE BOOK NO. 24 - PAGE 122

PENALTIES AND VIOLATIONS ORDINANCE -
ORDINANCE BOOK NO. 24 - PAGE 163

DEFINITIONS ORDINANCE -
ORDINANCE BOOK NO. 24 - PAGE 158

Councilman Newman moved to adopt Ordinance No. 3523, a budget amendment in the amount of $215,000 for four additional staff to increase enforcement efforts and providing on call services 24/7. This motion was seconded by Vice-Mayor Jones.

Mayor Bellamy said that after talking with City Manager Jackson, she asked for a friendly amendment to add one more plan reviewer and one more construction inspector (for a total of six new staff) in light of the number of building permit requests we are about to receive.

In response to Councilman Newman, Ms. Ball said that the two additional staff would result in an additional on-going cost of $85,000 and an additional $25,000 for a one-time vehicle cost for an additional $110,000. The total budget amendment would be for $325,000, which would come from the fund balance of the stormwater utility.

Councilman Newman accepted the friendly amendment for the addition of six additional staff, with a total budget amendment of $325,000.

Councilman Mumpower felt we are moving too quickly with these actions.

Vice-Mayor Jones understands the need for additional staff for enforcement, but would like to revisit that issue in the budget cycle in approximately 6-12 months.

The amended motion made by Councilman Newman and seconded by Vice-Mayor Jones carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 24 - PAGE 167

In response to Vice-Mayor Jones, City Manager Jackson said that the Planning & Zoning Commission will get the complete set of minutes and any staff analysis of those points so they can review each comment made. Their recommendations will come back to City Council for action, if Council deems appropriate.

Mayor Bellamy said that her comments are centered more around what is going back to the Planning & Zoning Commission. This weekend Patton Avenue was flooded and no development was happening on Patton Avenue, except for a sewer line, but that had nothing to do with the flooding. It is the stormwater system. She would like more emphasis on maintaining and upgrading our stormwater system. Some of the pictures Council saw tonight showed that there were stormwater measures in place, but they failed. Enforcement is key. We need to start advertising for staff as soon as possible to fill the vacancies. Communication is paramount. We need to make sure our ordinance is clear and the developer and inspectors know exactly what has been approved by City Council. She does want to see a separation of the ordinances - one for stormwater and one for erosion control, and even the exemptions separated clearly so people

can understand how they are exempted. She has a concern that staff has a lot of authority to approve certain measures and she would like to see that mitigated because it puts staff in a precarious position whereas as elected officials we should have a little more say so in that process, or even the Planning & Zoning Commission. Regarding the buffer requirements, hardship is going to be important to her and she asked for a separate memo to Council on why this doesn't constitute a taking when we go beyond the state minimums.

Councilwoman Cape suggested using charts to make the ordinance easier to understand.

Mayor Bellamy said that this past Sunday, she and Councilman Freeborn, along with others, participated in a raft race on the French Broad River. They had a Nantahala guide with them and she thanked the elected officials for dealing with the water quality issue, as she has seen an improvement on the river in her 20 years as a guide. Mayor Bellamy acknowledged the work Quality Forward and RiverLink who have worked to improve the water quality in our area. The water quality has improved and she thanked the community who has given their time to clean up the river as well as donate money to make sure the river is taken care of. And, in order to take it to the next level, she understands that we have to have these regulations. What she heard tonight was that we care about where we live and now we need to figure out the best way to get to where we need to go to make sure that we improve the quality of life for everyone. Hopefully we can make Asheville a better place to work, live and play.

At 9:34 p.m., Mayor Bellamy announced a 10-minute recess.

Councilman Newman said that one of the components of the ordinance was the issue that people would have to hire a certified engineer to do the weekly or bi-weekly inspections. A question was raised if it had to be a certified engineer or could it be another person with professional credentials related to the development who does the inspections. He asked staff to provide additional information to that question and report back to Council.

VI. NEW BUSINESS:

A. DIRECTION FOR SIGN CODE REGULATION OF AMERICAN FLAGS

Ms. Lauren Bradley, Assistant to the City Manager, said that at its July 10, 2007, meeting, the Asheville City Council directed staff to seek input and a recommendation from the Mayor's Committee for Veteran Affairs on the consideration of an amendment to the Unified Development Ordinance to remove or amend existing standards set forth in Article XIII that regulate the use of flags in conjunction with commercial sales or advertising.

The Mayor's Committee for Veteran Affairs will consider this item at its regularly scheduled meeting on August 28, 2007. The committee's recommendation will be ready for presentation at City Council's September 11, 2007 meeting.

Based on the schedule described above, it is staff's recommendation that this item be continued until the September 11, 2007.

Councilman Mumpower moved to continue this item until September 11, 2007. This motion was seconded by Vice-Mayor Jones and carried unanimously.

B. RESOLUTION NO. 07-161- RESOLUTION AMENDING THE ANNEXATION SERVICES PLAN FOR THE YEAR 2007 ANNEXATION AREAS

Urban Planner Julia Cogburn said that this is the consideration of a resolution amending the Annexation Services Plan for the Year 2007 annexation areas. This item was originally

scheduled for August 14, 2007, however, it was continued until this date in order to give the public an opportunity to review all changes.

In adopting an annexation ordinance, the City has the authority to annex all or some of an area proposed for annexation, as long as that area qualifies for annexation. The City may also amend the services plan for the proposed annexation area or areas, as long as the requirements for providing service to the annexation areas continue to be met.

City staff presented the Annexation Services Plan for the Biltmore Lake, Sardis Road and Schenck Gateway areas to City Council on May 22, 2007. The City Council adopted the plan on this date.

The staff is now proposing that four pages of this plan be amended as follows.

- The first amendment is to Page 13 – the Statutory Standards Statement for the Schenck Gateway Area. The revisions are to the measurements of the aggregate external boundary line of the area, to the contiguous portion of this boundary, and to the percent of external boundary that coincides with the City boundary. These revisions were necessitated due to confusion regarding recent tax record/map changes at Biltmore Town Center.
- The second amendments are to Page 36 – Estimated Expenditures. The specific expenditure changes are minor and only to the figures for Solid Waste related services. These figures update final service counts and relevant multipliers (e.g., tipping fee; cost of recycling). The net change in annually recurring expenditures is (+) $2,626.00. The net change in capital expenditures is (-) $63.00.
- The final amendments are to the Present and Proposed Boundaries Map and the Generalized Land Use Map for the Schenck Gateway Area. These maps are being changed for the same reasons indicated for the first amendment. They reflect the area as described in the Resolution of Intent for this Schenck Gateway approved by the Asheville City Council on May 15, 2007.

As long as the Annexation Services Plan does not show the annexation area as qualifying under any additional statutory tests, no additional public hearing is required for this amendment to the Plan.

Pro:

- Clarifies details and provides more accurate information in the Annexation Services Plan for 2007.

Con:

- None seen.

City staff recommends City Council adopt a resolution amending the Annexation Services Plan to reflect revisions/corrections as presented.

When Councilwoman Cape asked what will happen to the small piece of land that is not included in this annexation, Ms. Cogburn said that they will probably talk with Biltmore Farms to see if they will voluntarily annex that little portion.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Newman moved for the adoption of Resolution No. 07-161. This motion was seconded by Vice-Mayor Jones and carried on a 5-2 vote, with Councilman Freeborn and Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 30 - PAGE 414

C. ORDINANCE NO. 3524- ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE BILTMORE LAKE AREA

Urban Planner Julia Cogburn said that this is the consideration of an ordinance extending the corporate limits of the City of Asheville to include the Biltmore Lake area. Mayor Bellamy said that this public hearing was held on July 24, 2007. This item was originally scheduled for August 14, 2007, however, it was continued until this date in order to give the public an opportunity to review all changes to the Annexation Services Plan.

On May 15, 2007, the City Council adopted Resolutions of Intent beginning the annexation process for the following three areas: Biltmore Lake; Sardis Road; and Schenck Gateway. The Annexation Services Plan for these areas was approved on May 22, 2007, and a public information meeting was held on July 2, 2007. Public hearings on each of the annexation ordinances were held on July 24, 2007. Adoption of the annexation ordinances is the final step in the annexation process. The effective date for these annexations is proposed in these ordinances to be December 31, 2007.

The ordinances set forth this effective date and also reference a metes and bounds description attached to the ordinance. The staff has made some minor revisions in these metes and bounds descriptions (from the information contained in the descriptions for the resolutions of intent) to make them easier to follow. The boundaries identified by the descriptions have not changed.

City staff recommends City Council adopt the ordinance to extend the corporate limits of the City of Asheville to include the Biltmore Lake area with the effective date as established by ordinance.

In response to concerns raised at the public hearing, Urban Planner Blake Esselstyn used slides to explain why the lines were drawn where they were in Biltmore Lake.

Councilman Newman said that these comments are pertinent to all three annexations before Council today. Not until he was on Council did he understand how profoundly Asheville is different from other cities across the state in terms of how cities grow. Involuntary annexation is a controversial topic all across the state, but that is the only tool that Asheville has to grow. In all other North Carolina cities when new developments along the edge of the city are proposed to connect to the city's water infrastructure, the developer is required to voluntarily annex the development into the city at that time. Cities grow naturally as the area becomes urbanized. Other cities do involuntary annexations to fill in the gaps from time to time. No other city in North Carolina is prevented from requiring developers who wish to secure city services from being required to voluntarily annex into the city as part of the bargain for receiving city services. We have been working hard as a Council to try to persuade our state legislators about how important this issue is - about how important it is that Asheville be allowed to work and to grow in the same way that other cities do. Involuntary annexation is a very unhealthy process for everyone involved and it's one of the least pleasant tasks that a City Council ever has to consider doing - it is unpleasant and seems very unfair for the people who have to go through it. There is a better way to do it and that is to allow Asheville to require developers to incorporate their projects into cities at the time they seek city services. If we are not allowed to grow our City in the future and as all new developments spring up around Asheville and those residents use our services and our infrastructure and the City taxpayers have to pay that full burden, we will be in a situation where we will continue to raise taxes on the families and businesses who are in Asheville even while services and infrastructure deteriorate. And that is not an acceptable situation.

Councilman Mumpower believes that Asheville is harmed by the bitter aftertaste of forced annexation. It violates most people's standards of fairness and while there are some constructive

arguments for annexation and certainly there are arguments for the fact that Asheville is treated differently than other cities, even neighboring cities, he still thinks the consequences do more harm than good.

Councilwoman Cape explained that she lives in a situation of where she lives in Asheville and across the street her best friend lives in Woodfin. She said that a dividing line does not break up a neighborhood.

Mayor Bellamy said that this is not an easy issue on either side of the table. Based on the comments raised about the dividing lines and responses from the public information meeting, there are larger issues at play for the City of Asheville. As a new Mayor, her focus is on basic city services and our current City boundaries. It is not her desire to go annexing but there is a reality that we have to face how we grow and we have to grapple with that. Annexation is not our number one tool of choice. She has worked for the past year with our legislators in trying to help us get some better tools to ask developers come into the city. One comment at the July 24 public hearing was that their developer came before Council for annexation and Council didn't accept it. To be honest, that developer wanted it all and wasn't willing to give and take. It was their parcel of land but our staff did try to negotiate. It was an issue of if you don't do what we want, you won't get a voluntary annexation - even though we have worked together on a development years before. In fact, we recently gave them tax incentives to try to work with them even more. It was disheartening as Mayor to have a developer say you will just have to use involuntary annexation. That was unfortunate because that was the only tool we had to try to work with them upfront. So to say that the City of Asheville didn't try to work with the developer is not true. This is a plea to ask our legislators to help us out. We are improving our water system, our streets and our sidewalks. At relocate.com, Asheville is the number one place to relocate in America. She's not saying that the City of Asheville is perfect, but we're far from where we were but we're not as good as where we're going. She will support this annexation and believes that we will get some assistance from our legislators to get the bigger picture fixed. She hoped that there will be developers who work with us to have voluntary annexations into the best City in this country.

Councilman Newman moved for the adoption of Ordinance No. 3524. This motion was seconded by Councilwoman Cape and carried on a 5-2 vote, with Councilman Freeborn and Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 24 - PAGE 169

D. ORDINANCE NO. 3525 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE SARDIS ROAD AREA

Urban Planner Julia Cogburn said that this is the consideration of an ordinance extending the corporate limits of the City of Asheville to include the Sardis Road area. Mayor Bellamy said that this public hearing was held on July 24, 2007. This item was originally scheduled for August 14, 2007, however, it was continued until this date in order to give the public an opportunity to review all changes to the Annexation Services Plan.

On May 15, 2007, the City Council adopted Resolutions of Intent beginning the annexation process for the following three areas: Biltmore Lake; Sardis Road; and Schenck Gateway. The Annexation Services Plan for these areas was approved on May 22, 2007, and a public information meeting was held on July 2, 2007. Public hearings on each of the annexation ordinances were held on July 24, 2007. Adoption of the annexation ordinances is the final step in the annexation process. The effective date for these annexations is proposed in these ordinances to be December 31, 2007.

The ordinances set forth this effective date and also reference a metes and bounds description attached to the ordinance. The staff has made some minor revisions in these metes

and bounds descriptions (from the information contained in the descriptions for the resolutions of intent) to make them easier to follow. The boundaries identified by the descriptions have not changed.

City staff recommends City Council adopt the ordinance to extend the corporate limits of the City of Asheville to include the Sardis Road area with the effective date as established by ordinance.

Vice-Mayor Jones moved for the adoption of Ordinance No. 3525. This motion was seconded by Councilwoman Cape and carried on a 5-2 vote, with Councilman Freeborn and Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 24 - PAGE 173

F. ORDINANCE NO. 3526 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE THE SCHENCK GATEWAY AREA

Urban Planner Julia Cogburn said that this is the consideration of an ordinance extending the corporate limits of the City of Asheville to include the Schenck Gateway area. Mayor Bellamy said that this public hearing was held on July 24, 2007. This item was originally scheduled for August 14, 2007, however, it was continued until this date in order to give the public an opportunity to review all changes to the Annexation Services Plan.

On May 15, 2007, the City Council adopted Resolutions of Intent beginning the annexation process for the following three areas: Biltmore Lake; Sardis Road; and Schenck Gateway. The Annexation Services Plan for these areas was approved on May 22, 2007, and a public information meeting was held on July 2, 2007. Public hearings on each of the annexation ordinances were held on July 24, 2007. Adoption of the annexation ordinances is the final step in the annexation process. The effective date for these annexations is proposed in these ordinances to be December 31, 2007.

The ordinances set forth this effective date and also reference a metes and bounds description attached to the ordinance. The staff has made some minor revisions in these metes and bounds descriptions (from the information contained in the descriptions for the resolutions of intent) to make them easier to follow. The boundaries identified by the descriptions have not changed.

City staff recommends City Council adopt the ordinance to extend the corporate limits of the City of Asheville to include the Schenck Gateway area with the effective date as established by ordinance.

Councilwoman Cape moved for the adoption of Ordinance No. 3526. This motion was seconded by Councilman Newman and carried on a 5-2 vote, with Councilman Freeborn and Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 24 - PAGE 176

G. REQUEST FROM ADVANTAGEWEST AND THE ASHEVILLE-BUNCOMBE COUNTY ECONOMIC DEVELOPMENT COUNCIL FOR THE CITY TO PARTICIPATE IN THE CERTIFIED ENTREPRENEURIAL COMMUNITY PROGRAM

Economic Development Director Sam Powers said that this is the consideration of a proposal to participate with the Asheville Buncombe County Economic Development Council (EDC) in the implementation of the Certified Entrepreneurial Community Program (CEC).

The CEC is a new initiative developed by AdvantageWest, the regional economic development partnership for the western 23 counties. The CEC seeks to create communities of entrepreneurial interests by promoting public and governmental awareness of the need for entrepreneurship. The CEC program requires certification of participating or governmental bodies and local units of governments regarding their approach, strategy, and state of readiness with respect to entrepreneurship.

In our correspondence and discussions in regards to this program, staff believes that this program can be best served on a county level, as with the other 11 participating counties. We see this as compatible with the HUB Project strategy for job creation, and the EDC would be a logical choice for program management because of past experience.

AdvantageWest provided an overview of this program to the Sustainable Economic Development Advisory Committee at their regular meeting of June 14, 2007. SEDAC members present at the meeting discussed that a county approach to leadership in this program would be the way to proceed with the EDC taking that lead.

Pros:

- Potential to enhance the network and services for small business development.
- New framework for assisting entrepreneurial growth and retention in Buncombe County.
- Meet Strategic Goal established by City Council for collaboration with Buncombe County and neighboring municipalities.

Cons:

- County wide financial participation has not been organized and performance measures for growth increases in job creations have not been established.
- Relationships with other major stakeholders such as HUB Alliance, Mountain BizWorks, Buncombe County, and others are unclear.

City staff recommends City Council consider the EDC request for a $25,000 payment to administer the program in Fiscal Year 2007-08. Authorization of the agreement would require a budget amendment to reallocate the $25,000 from fund balance to the Economic Development office.

After a brief discussion of the program, it was the consensus of Council that even though this is a good program, it seems fairly duplicative with the HUB project and there was no motion made to contribute $25,000 to the program.

H. ORDINANCE NO. 3527 - ORDINANCE AMENDING THE PARADE ORDINANCE

City Attorney Oast said that this is the consideration of an ordinance amending the City's Parade Ordinance

The City's parade ordinance was last amended in June of 1996, that amendment was comprehensive, and included picketing as well. The 1996 amendment coincided with developments in the law at about that time that caused many municipalities to undertake amendments to their ordinances.

The City's parade ordinance has worked well since 1996, but developments in the law over the intervening years have shown the need to consider further revisions. The proposed revisions are set out in the revised ordinance, and are summarized below:

1. Subsections (a), (b) and (c) are essentially unchanged.

2. Subsection (d), containing exceptions, is new. These exceptions are traditional exceptions, and the City has a practice of recognizing them. This paragraph codifies those exceptions.

3. Subsection (e) regarding permit and escort fees, has been substantially revised in response to recent case law. This paragraph makes clear the fees that the City charges are for services that are requested by the organizers or that are necessary to protect public safety. Significantly, from a constitutional standpoint, this subsection provides for a waiver or reduction in those fees if the organizers are demonstrably indigent, or as necessary to ensure that constitutional rights are not infringed. If it is determined that there has been a material misrepresentation of indigency, the proposed revision provides that the organizers may be assessed an appropriate fee after the event has occurred.

4. Subsection (f) sets out the permit application process. This requires an application to be submitted five days in advance (increased from the current 48 hours), but allows for a shorter time in the event of an "emergent public issue."

5. Subsection (h) prescribes the permit issuance standards, and allows the chief of police (the city official who processes permit applications) to make an appropriate public safety assessment, including whether adequate public safety resources are available. This subsection clarifies that this determination may not be based on the subject matter of the event, or the number of anticipated non-participant observers.

6. Subsection (i) sets out the process and timing for action on the application.

7. Subsections (k) and (l) set out the rights of applicants to appeal the police chief's determination, including a process for a "post event" appeal.

The timing and substance of these revisions are in part a response to the litigation that arose out of the May 1 We Are One America march that occurred in May of 2006. While the march went on as planned, the lawsuit claims that the City improperly assessed certain fees. The revisions proposed here address the issues identified in that litigation as well as bringing our ordinance current with the law in this area, and have been discussed during the course of settlement negotiations.

Pros:
- Codifies practice into ordinance
- Clarifies the factors that may be considered in parade permit decisions (and those that may not)
- Brings City's ordinance current with evolving law
- Prescribes a more predictable process

Con:
- May require more time and resources to process a permit application

If Council approves of the revisions, adoption of the ordinance is recommended.

Councilman Mumpower suggested that items such as this be routed through the City Council Public Safety Committee first.

City Attorney Oast responded to questions raised by Councilwoman Cape.

Mayor Bellamy said that members of Council have been previously furnished with copies of the ordinance and it would not be read.

Councilman Freeborn moved for the adoption of Ordinance No. 3527. This motion was seconded by Councilman Newman and carried unanimously.

ORDINANCE BOOK NO. 24 - PAGE 179

I. CONSIDERATION OF BOARD AND COMMISSION INTERVIEWS

It was the consensus of City Council to instruct the City Clerk to prepare the following interviews for vacancies on the Americans with Disabilities Act Compliance Committee: Walter Randolph and William Madison. Mayor Bellamy took a moment to extend sympathy to the family of Mary Robertson and to acknowledge her outstanding work on this committee, as well as her work with the veterans, her work at the polls, and her work at the Housing Authority.

It was the consensus of City Council to instruct the City Clerk to prepare the following interviews for vacancies on the Civic Center Commission: Elizabeth A. Jones, J. Michael Burke and John West.

It was the consensus of City Council to instruct the City Clerk to prepare the following interviews for a vacancy on the Tourism Development Authority: current member Ron Storto and Rupa Russell. After a brief discussion of reappointment criteria, Vice-Mayor Jones said that she doesn't see reappointments as automatic, and if a member of Council wishes to interview for a vacancy, then it has been Council's practice to interview.

VII. OTHER BUSINESS:

Councilman Davis was pleased with the turnout at the kick-off event for the Speedway Memorial Fundraiser. They have nearly achieved their goal and welcomed contributions, made payable to Eblen Charities - marked for the Speedway Memorial.

At the request of the Public Art Board, Councilman Mumpower encouraged artists to participate in the Postcards from the Ledge program (to raise funds for public art) where people from the community and people of celebrity submit 5x7 postcard art.

Councilman Mumpower thanked the people who came out on August 18, 2007, to paint a resident's home in Lee Walker Heights as part of the For Our Kids program.

Councilman Mumpower encouraged people to participate in the Mountain Council on Alcohol & Drug Dependence's Recovery Rocks the Mountains program on September 8, 2007, from 11:00 a.m. - 3:00 p.m. at Martin Luther King Jr. Park.

Councilman Freeborn was pleased to report that this year the City of Asheville came in 2nd place in the Land-of-Sky Mayor's Raft Race. He thanked his fellow rafters - Mayor Bellamy, Jason Mann and two Asheville fire fighters.

Councilman Freeborn was pleased to see Mr. Robert White, from Pisgah View Apartments, develop a community garden at Pisgah View Apartments. Mr. White is putting children to work in growing food and he is coordinating with other community gardens in the City, including one at Vance Elementary School.

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Rev. Christopher Chiaronmonte alleged that 80% of police officers on the force have less than 2 years experience and 80% of the fire fighters have less than 5 years experience. He felt City Council should investigate why police officers and fire fighters leave employment with the City of Asheville. Mayor Bellamy stated that information is inaccurate.

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 10:50 p.m.

Kristina Lipe
CITY CLERK

Jerry M Bellamy
MAYOR

Tuesday – August 28, 2007 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Keisha Lipe

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Mumpower gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING AUGUST 28, 2007, AS "WAKEFIELD ELLISON DAY"

Mayor Bellamy read the proclamation proclaiming August 28, 2007, as "Wakefield Ellison Day" in the City of Asheville. She explained that Wakefield had an outstanding performance at the state basketball competition and was selected by the USA Junior Nationals basketball program to compete in the "International Sports Festival" in Columbus, Ohio. In addition, Wakefield, a junior at Asheville High School, was the only player from Western North Carolina on the roster. He helped lead the Carolinas team to the championship in the US Junior Nationals basketball tournament by scoring 19 points to help the Carolinas beat California Blue 63-49. She proudly presented the proclamation to Mr. Ellison.

II. CONSENT AGENDA:

Mayor Bellamy said that various Council members have requested that Consent Agenda Items "B," "D," "E," "F," and "G" be removed from the Consent Agenda for individual votes.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON AUGUST 21, 2007

B. RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR A GRANT FROM THE U.S. DEPT. OF HOMELAND SECURITY FOR THE STAFFING OF THREE FIREFIGHTERS THROUGH THE STAFFING FOR ADEQUATE FIRE AND EMERGENCE RESPONSE

This item was removed from the Consent Agenda for an individual vote.

C. ORDINANCE NO. 3528 - BUDGET AMENDMENT FOR A DEPUTY CITY CLERK POSITION

Summary: The consideration of a budget amendment in the amount of $46,000 to be funded with an appropriation from fund balance for a Deputy City Clerk position.

The purpose of this report is to propose enhancements to the City Clerk's office to provide improved support for Boards and Commissions activities, records management and other administrative duties. These improvements would be accomplished through the addition of a full-time Deputy City Clerk.

Asheville City Council has expressed an interest in improving the city's management of Boards and Commissions activities, records management and other administrative responsibilities that support citizen interaction with the city's elected board. In addition, with the recent addition of three formal meetings per month, the amount of agenda coordination required from week to week has increased.

In the past, support for Deputy City Clerk responsibilities was provided by a position that also served as the city manager's administrative assistant as well as the receptionist for the second floor. As the organization has grown, the ability of this position to meet these demands has diminished. At the same time, the city's ability to proactively manage the Boards and Commissions program along with other City Council initiatives has received less support.

City Clerk's Office Responsibilities: The breakdown below shows how responsibilities could be divided between the City Clerk and a Deputy City Clerk.

Deputy City Clerk

- Boards and Commissions Program Manager
  - Develop new board member orientation for all volunteers
  - Coordinate an annual board member luncheon retreat with City Council
  - Create a Boards and Commissions database of all current members and candidates
  - Improve the Talent Scout and application process
  - Place board membership and minutes on Web site
- Records and Contract Management
  - Coordinating public information and document requests
  - Indexing minutes, ordinances & resolutions
  - Sealing, routing and filing city contracts
  - Fixed asset reports
  - Post resolutions and ordinances on Web site
- Ceremonial Arrangements for City Council Meetings
  - Coordinating Proclamations and Pledge of Allegiance arrangements
  - Communicating with Council members regarding invocation
- Preparation for City Council Meetings
  - Preparing agenda notebooks for Mayor, City Manager, Assistant City Manager & Vice-Mayor
  - Preparing City Council Chamber, kitchen area and catering for meetings
- General City Council Support
  - Coordinate City Council travel and meeting arrangements
  - Arrange recurring meetings between Mayor and Council members
  - Log, track and respond to customer and citizen requests
  - Meeting minutes
  - Coordinate City Council retreats
- Serve as back up for City Clerk during absences

City Clerk

- Coordinate City Council Agendas
  - Work with the Mayor to schedule items and prepare the monthly report and 8-week agenda

- Coordinate staff reports and supporting documents with the City Manager and operational staff
- Log all Council members agenda item request
- Prepare letter to Council members when agenda items are scheduled
- Prepare weekly agenda packages and place on Web site
- Post meeting minutes and action agendas on Web site
- Attend City Council meetings
- Administer Oaths of Office
- Set-up Council laptops

- Public Meeting Notification
  - Post media notice for all City Council public meetings
  - Post media notice for all City Council travel
- Organize archives and history files for seventh floor storage
- Recording Documents
  - Prepare and record documents at the Register of Deeds Office
- Records & Retention Schedule
  - Work with the NC Dept. of Cultural Resources on any updates to the schedule
- Prepare and submit the Secretary of State gender appointments for Boards and Commissions
- Prepare and monitor the City Clerk's budget
- Ordinances to be codified
  - Coordinate periodic revisions to the City Code of Ordinances
  - Distribute to departments new codified pages
- Legal Notices
  - Prepare legal notices for public hearings
  - Prepare notices for staff to post for public hearings

Professional Services Contract: It is the City Clerk's recommendation that City Council continue its contract for professional services for meeting minutes through August 2008. This time period would allow the City Clerk's Office the opportunity to gradually absorb the responsibility of taking minutes at City Council meetings.

Staff recommends City Council approve a budget amendment in the amount of $46,000 to be funded with an appropriation from fund balance for a Deputy City Clerk position.

ORDINANCE BOOK NO. 24 - PAGE 184

D. RESOLUTION AUTHORIZING THE MAYOR TO CONVEY AIR SPACE ADJACENT TO 82 PATTON AVENUE FOR THE PURPOSE OF ERECTING A PERMANENT BUILDING OR STRUCTURE

This item was removed from the Consent Agenda for an individual vote.

E. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT CREATING A 401 (A) RETIREMENT PLAN FOR FIREFIGHTERS OF THE ASHEVILLE FIRE AND RESCUE DEPARTMENT

This item was pulled from the Consent Agenda for an individual vote.

F. RESOLUTION AUTHORIZING THE ASHEVILLE REGIONAL AIRPORT AUTHORITY TO PROVIDE A LEASE TERM TO ENCORE FBO ACQUISITIONS, LLC, THAT EXTENDS BEYOND THE TERM OUTLINED IN THE CITY OF ASHEVILLE AND ASHEVILLE REGIONAL AIRPORT AUTHORITY LEASE AGREEMENT

This item was pulled from the Consent Agenda for an individual vote.

G. RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE BIG BROTHERS/BIG SISTERS 25TH ANNIVERSARY CONCERT

This item was removed from the Consent Agenda for an individual vote.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Freeborn moved for the adoption of the Consent Agenda. This motion was seconded by Vice-Mayor Jones and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

B. RESOLUTION NO. 07-162- RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR A GRANT FROM THE U.S. DEPT. OF HOMELAND SECURITY FOR THE STAFFING OF THREE FIREFIGHTERS THROUGH THE STAFFING FOR ADEQUATE FIRE AND EMERGENCE RESPONSE

Summary: The consideration of a resolution authorizing the City Manager to apply for a grant from the US Department of Homeland Security for staffing for three firefighters through the Staffing For Adequate Fire and Emergency Response (SAFER).

In order to improve emergency services delivery for the citizens of Asheville, we present the consideration of a grant application for a five-year Federal SAFER (Staffing for Adequate Fire and Emergency Response) grant which would fund 90% of the cost of three firefighters in Fiscal Year (FY) 2007-08. This percentage would decrease each year for four years with the City assuming 100% of the cost in FY 2011-12.

An analysis indicates that to improve our services, our current firefighter staffing can be enhanced. In order to determine staffing needs analysis, we consider several different measurements including industry, insurance, regulatory, accreditation and benchmarking standards, or best practices.

1. Industry standard - The City of Asheville currently operates 15 emergency response units. Approximately half of our units operate with three firefighters on duty. The remaining half operates with four firefighters on duty. Due to increased efficiency and safety, the national staffing and deployment industry standard calls for a minimum of four firefighters on all response companies.

2. Insurance standard - Under the most recent review, the Asheville Fire and Rescue Department (AFR) qualified as an ISO class 3 department, earning a department total of 78.58%. This 2006 review provided a 9% improvement over the 1993 review. However, the overall weakest area in this most recent review was available staffing, for which we earned only 53.9% of the available staffing points. The city's ISO rating directly affects property insurance rates for city residents and businesses.

3. Regulatory standard – Federal labor laws require us to assemble certain numbers of firefighters on emergency scenes before making interior fire attacks on structures. Currently, all but one of our single company response stations has four firefighters on duty.

4. Accreditation standard - Asheville meets the minimum standard of cover in order to be recognized as an accredited agency. However, Asheville's standard of cover is weaker

in comparison to all other accredited departments in North Carolina. This coverage deficiency is partially due to our mountainous topography. In addition we are also often delayed in placing a full complement of necessary personnel on fire scenes because half our companies operate with three firefighters.

5. Benchmarking/Best Practices – We continually assess our staffing through the UNC School of Government benchmarking project for North Carolina. That benchmarking report reflects that we have more fires per 1,000 population of any other rated NC city and we have the second worst percentage of full response within 8 minutes, which is a time critical in both fire and medical emergencies.

In order to address our staffing needs, we have several options available to us. These include, but are not limited to:

1. Annual operating budget requests
2. Grant funding requests
3. Requests through annexation plans

In 2006, Asheville City Council authorized application and accepted a SAFER grant for three firefighters. These three additional firefighters allows for one engine company to operate with four firefighters rather than three. This federal program has worked very well for Asheville thus far, as well as scores of other North Carolina cities to improve firefighter staffing while minimizing input of local general fund tax dollars.

We again have an opportunity to apply for SAFER grant funds. We propose to again apply for grant funding for three additional firefighters through the SAFER act grant for FY 2007-2008. If awarded, Council will need to accept the grant award at a later date.

Currently, Engine 2, located on South French Broad Avenue, operates as a three person response company. Station 2 is our only single company station operating with three firefighters on duty. Obtaining these three additional firefighters would enable us to advance to having four firefighters on duty. Engine 2 is our fourth busiest company in the city, answering over 1,700 emergency calls annually in their immediate first due district.

Improving the staffing of Engine 2 would enhance emergency services delivery to the areas served by Engine 2 including the areas in and around Mission Hospital, the river district area, AHA properties and south downtown.

Maintaining our accredited agency status requires that we continually measure all of the time components of an emergency response from 911 call to mitigation of the emergency. These times include processing the 911 call, turn-out time, travel time, and set-up time once on scene. One additional firefighter on a fire engine reduces that company's set-up time as follows:

- Set-up time for fires is reduced by 48%
- Set-up time for rescues is reduced by 73%
- Set-up time for medical emergencies is reduced by 55%
- Our fire suppression capabilities will also increase. One additional firefighter on each company increases that company's capability by 67%.

The SAFER grant would allow the City to hire three firefighters in FY2007-08 by awarding 90% funding with a 10% City contribution. A January 1, 2008 start date is assumed for these three firefighters. The annualized five year grant breakdown is provided in the following table.

Fiscal Year	Percent Match (Federal/City)	Annualized Salary Cost (City)	*Operating Cost (City)

FY2007-08	90/10	$10,598	$10,000
FY2008-09	80/20	$22,893	$600
FY2009-10	50/50	$61,811	$600
FY2010-11	30/70	$95,516	$600
FY2011-12	0/100	$144,192	$600

*Operating costs include protective clothing, gear, and radios in the first year, and training and other expenses in years thereafter. These costs will be absorbed in the department's budget.

Our city continues to grow and so does our emergency call volume. Over the past 9 years, emergency calls have increased 32%.

In an effort to immediately improve levels of emergency service delivery within the City of Asheville, while postponing the full cost of this effort for five years, staff is recommending the Fire & Rescue Department be allowed to apply for the competitive SAFER grant.

Pros:

- Allows City to hire three firefighters at one time while not absorbing the full cost for five years.
- Funding for the SAFER program has already been allocated. If Asheville does not apply, the grant funds will go to other cities that do apply.
- Council will have the opportunity to accept the grant at a later date, should it be awarded, based upon Asheville's merit in the competitive grant program.

Con:

- The City must absorb 100% of the cost of the three firefighters for the full fiscal year FY2011-12.

City staff recommends City Council approve a resolution authorizing the City Manager to apply for a grant from the US Department of Homeland Security for staffing for three firefighters through the Staffing For Adequate Fire and Emergency Response (SAFER).

Councilman Mumpower said that at a time of unprecedented national debt we should not be taking money from the US Dept. of Homeland Security. He felt if we need three more firefighters, then we should pay for it ourselves.

Mayor Bellamy said that this year the president of the chiefs of police organization spoke before a congressional committee. One of the things that he stated was that the police and fire personnel are the first line of defense in homeland security and that is why she will support the motion.

Councilman Freeborn moved for the adoption of Resolution No. 07-162. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 30 - PAGE 419

D. RESOLUTION NO. 07-163 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY AIR SPACE ADJACENT TO 82 PATTON AVENUE FOR THE PURPOSE OF ERECTING A PERMANENT BUILDING OR STRUCTURE

Summary: The consideration of a resolution authorizing the Mayor to convey air space adjacent to 82 Patton Avenue, for the purpose of erecting a permanent building or structure.

On August 14, 2007, City Council adopted Resolution No. 07-153, terminating the upset bid process for the sale of air rights adjacent to 82 Patton Avenue and directing staff to commence a new process under the condition that a sale of air rights adjacent to 82 Patton Avenue is conditioned for the purpose of erecting a permanent building or structure.

On August 15, 2007, a qualifying offer was received in the amount of $5,000 from Urban Capital, LLC., for the purchase of air rights conditioned on the intent to construct permanent balconies in the said air space. Pursuant to N.C. Gen. Stat. sec. 160A-269, the City Clerk advertised for upset bids regarding the offer to purchase air rights for the purpose of constructing a permanent building or structure in City owned property adjacent to 82 Patton Avenue; (PIN 9649.18-30-3015) for the sum of $5,000. The notice ran in the Asheville Citizen-Times on August 17, 2007. No qualifying upset bids were received in response to said advertisement.

Pursuant to Council's request, the Tree Commission has reviewed the proposed balcony construction and has approved the site plan, with no negative impact to the urban tree design.

Approval of the resolution will authorize the sale of the property to Urban Capital, LLC for the amount of $5,000.

Pros:

1. The sale will be at fair market value.
2. It will facilitate an increase in the tax base.
3. It will accommodate the connectivity of public and private space for a more robust downtown environment.

Con: There is no negative impact.

Economic Development staff recommends City Council approve a resolution authorizing the Mayor to convey air space adjacent to 82 Patton Avenue, for the purpose of erecting a permanent building or structure.

In response to Councilman Newman, Economic Development Director Sam Powers said that staff understood Council's direction that in the future base bids cover administrative time. In this case, however, that was not done. But, the bid amount was $5,000 ($2,000 more than the formula) and he felt the bid would cover the administrative time.

Councilwoman Cape moved for the adoption of Resolution No. 07-163. This motion was seconded by Councilman Mumpower and carried on a 6-1 vote, with Mayor Bellamy voting "no."

RESOLUTION BOOK NO. 30 - PAGE 420

E. RESOLUTION NO. 07-164- RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT CREATING A 401 (A) RETIREMENT PLAN FOR FIREFIGHTERS OF THE ASHEVILLE FIRE AND RESCUE DEPARTMENT

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement creating a 401(a) retirement plan for firefighters of the Asheville Fire and Rescue Department.

During the budget process, Council approved the creation of a 401(a) plan for Firefighters with a 2% City match. This resolution officially creates this plan and is necessary in order to set up the plan with International City Manager Association. Our goal is to have the plan in place by October 1, 2007.

Staff recommends City Council approve a resolution authorizing the City Manager to enter into an agreement creating a 401(a) retirement plan for firefighters of the Asheville Fire and Rescue Department.

Councilman Mumpower felt that this is a well-intended effort to address the fairness issue with our firefighters retirement fund. They do not participate, by choice, in social security and thus their retirement is not equitable with other employees of the City. He agrees that there is a fairness equation. He does not believe that this solution represents the final outcome to that lack of fairness. The firefighters have said this is just a foot in the door and it will create a further adversarial relationship with Council and it alienates the firefighters from other city employees because we are creating a unique system that takes them further away from social security instead of encouraging them to move toward it. It was his contention that we look for a way to compensate them for electing to participate in social security by providing them with a pay increase, in partial form, that helps compensate them and get them over that initial apprehensive.

Councilman Newman, Chairman of the Revenue and Finance Committee, worked with the firefighters on this proposal, which they brought forward to address this long-standing issue. He did think they should participate in social security as well but the firefighters have voted on that and that is not going to happen. He felt this is a positive step forward

Councilman Newman moved for the adoption of Resolution No. 07-164. This motion was seconded by Councilman Freeborn and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 30 - PAGE 424

F. RESOLUTION AUTHORIZING THE ASHEVILLE REGIONAL AIRPORT AUTHORITY TO PROVIDE A LEASE TERM TO ENCORE FBO ACQUISITIONS, LLC, THAT EXTENDS BEYOND THE TERM OUTLINED IN THE CITY OF ASHEVILLE AND ASHEVILLE REGIONAL AIRPORT AUTHORITY LEASE AGREEMENT

Summary: The consideration of a resolution authorizing the Asheville Regional Airport Authority to provide a lease term to Encore FBO Acquisitions, LLC that extends beyond the term outlined in the City of Asheville and Asheville Regional Airport Authority Lease Agreement.

The Asheville Regional Airport Authority requests authority to enter into a lease with Encore FBO Acquisitions, LLC that extends beyond the airport's current lease term with the City.

The Airport Authority Board unanimously approved (7-0) a new business venture with Encore FBO Acquisitions, LLC. Encore is a provider of aviation related services, including aircraft fueling, maintenance, hangar storage, etc. Encore will make an initial investment of $3.5 million and future investments of $4.5 million.

The lease term for this development project includes a 30 year base term, with the potential for an additional 10 years. The potential term of 40 years will exceed the Authority's lease term with the City for the Airport, which runs through 2018, with an option of an additional 25 years. In light of these terms, the Authority is requesting approval to enter into a lease with Encore that extends beyond the Airport's current lease with the City.

Staff, including City Attorney Bob Oast and Economic Development Director Sam Powers, reviewed this request. Based on discussions with the City's legal staff and the Airport Authority's attorney, City staff is comfortable proceeding with approval of this request.

Staff recommends City Council approve a resolution authorizing Asheville Regional Airport Authority's request to enter into a lease a 30 year base lease, with an optional 10 years, with Encore FBO Acquisitions, LLC.

Ms. Patsy Brison, attorney representing Asheville Jet Inc., d/b/a Million Air, presented Council with a letter dated August 10, 2007, to Mayor Bellamy from Mark Dumas, attorney representing Asheville Jet Inc. Ms. Brison reviewed the letter explaining that Asheville Jet has operated the Million Air Fixed Base Operator (FBO) at the Airport for over a decade. Encore would be the second FBO at the Airport. In general, Asheville Jet does not have an issue with having as many FBO's as the Airport can sustain, but they are concerned about the terms of the Encore lease because the lease would harm the Airport, the City and Asheville Jet. She explained the following concerns of the lease (1) does not fiscally benefit the Airport or the City; (2) was not approved with sufficient evaluation or openness; (3) will jeopardize the availability of federal funds; and (4) may result in civil and administrative litigation. In summary, she asked that Council vote to deny the Encore lease and ask the Airport Authority to re-consider approval of the lease, or in the alternative, to continue this matter until the City's counsel has an opportunity to examine the contents of the letter from Mr. Dumas and to a letter she will be providing to the City in the very near future.

Mr. David Edwards, Airport Authority Director, responded to each of the concerns raised by Ms. Brison reminding Council that the Airport Authority has thoroughly reviewed this lease and voted unanimously to request Council's approval. He stated that he is waiting for a written confirmation from an Federal Aviation Administration (FAA) representative in Atlanta who (through a voice mail message) said that they have reviewed the proposed Encore lease and based on their evaluation, they had no issues with what the Airport is proposing and they did not feel the Airport is in violation of any federal regulations. He said that until they receive the letter from the FAA they would not execute the lease with Encore. He pointed out that their request is specifically related to the term since the term extends beyond the Airport's current lease with the City. In addition, he said that if the Airport Authority has property that is available for lease and they have a party that is willing to lease it and provide aviation services, they do not have a choice, by federal regulations, but to negotiate an agreement in good faith that meets all the requirements of the compliance regulations.

Throughout discussion, Mr. Edwards responded to various questions/comments from Council, some being, but are not limited to: is the Airport Authority open to re-negotiating the terms of the Million Air lease; how will the lease support the Airport and the City regarding revenue; how many FBO's do airports Asheville's size have; how long is the Asheville Jet lease; what has been done regarding sufficient openness; is there any urgency in approving the lease; and explain the $3 Million infrastructure the Airport Authority has built for Asheville Jet.

In response to Mayor Bellamy, Chief Financial Officer Ben Durant said that the City does not receive any revenue funds from the Airport. He said that the Airport has the right to negotiate sub-leases as long as they are doing it in a manner that does not inhibit the Airport's ability to be an airport. We have to rely on their expertise and opinions in these matters. He said staff looked at the lease, noting that we are not aviation experts, and didn't see anything against that philosophy. In addition, staff was advised that the Airport received assurances that the FAA looked into the matter and didn't see any violations. City staff felt that it was within the purview of the Airport Authority to make that decision.

When Mayor Bellamy asked if the City should wait until the FAA sends written confirmation stating that they have no concerns with the lease agreement, City Attorney Oast said it would be up to Council whether to delay action on this matter until the letter is received.

There was a brief discussion about negotiations making the Airport Authority an independent authority. Mayor Bellamy briefly explained that the policy direction by Council to move forward with discussions on an independent Airport Authority has not changed, but that Henderson County has asked for additional time to consider their options. The City's current lease with the Airport Authority expires in 2018, and she is not willing to delay any action until those negotiations are finalized.

Councilman Davis moved to approve the resolution authorizing the Asheville Regional Airport Authority to provide a lease term to Encore FBO Acquisitions, LLC that extends beyond the term outlined in the City of Asheville and Asheville Regional Airport Authority Lease Agreement. This motion was seconded by Councilman Freeborn.

Councilman Newman said that Asheville and Buncombe County have talked about regional issues for some time and he is supportive of those initiatives. He felt we can't defer making decisions until those type decisions are made.

Mayor Bellamy said that she will not abnegate her responsibilities based upon future negotiations. As a Council member and Mayor she still has to vote on issues as they come forward, understanding that discussions will continue. It's important to realize that there are a lot of good ideas being discussed all the time. For example, the Parks & Recreation Department is in conversations with various entities over partnerships. She didn't want to stop staffing in that Department because that partnership may or may not occur. Also, she is not going to stop upgrading our water system just because she's not sure how the lawsuit will end. What is important to her is while we have it in our hands, that we be good stewards over it. Until 2018 the Airport exists in its current form and after 2018 we can sign another lease or say we want to bring it in house and run it as a department. She doesn't look at this as a decision that will impact today, but for the future.

Councilman Mumpower said he would not support the resolution before the independent airport authority issue is resolved. He saw no urgency in approving the lease.

Councilwoman Cape said that her issues are around fairness and whether or not there are legal concerns with the FAA. She wanted all our tenants to be treated fairly and hoped that the Airport Authority will work to that end to accomplish that.

The Vice-President of Million Air explained that all they want is to be treated fairly. They invested $5 Million for a 14 year lease, whereas the Encore lease is for 30 years (with an unheard of potential for 40 years) with a $4.5 Million investment on different financial terms. They do not take advantage of being the only FBO at the Airport. Regarding the hangars the Airport built for Million Air, the Airport is getting a better return on their investment, through Million Air's payments to them, than they would be having the money invested. The Airport will be spending $2.5 Million to fill in land for Encore and there is no return on that money spent. They have $5 Million invested and now the Airport Authority has agreed to allow Encore to put a trailer on the cement and get two fuel trucks and start competing against Million Air. He questioned how can they compete fairly with them when their overhead is 20 times that. He alleged that the Encore group was never heard of until five days before the Airport Authority voted. He urged Council to vote against the lease.

Councilman Freeborn, Chair of the Airport Authority, said that the Airport Authority has talked to Million Air about renegotiating their lease and extending the terms, but they were not interested in that. He explained the public comment process, noting that in 2006 the Airport Authority talked about their long-term goals and a second FBO was one of those goals. A Million Air representative was at that meeting and could have given input, but didn't. He said they have had various conversations with tenants of Million Air about their satisfaction with the facilities. The Airport has had to make accommodations for new facilities because of the dissatisfaction and the unwillingness by Million Air to work with those tenants. He can understand, having the terms and conditions that Million Air has on their lease, of them not wanting to invest some of those dollars, but when the Airport Authority offers to renegotiate those terms, they were told "no thank you." Personally that doesn't show their interest in the long-term viability of the Airport. Since starting the conversation about another FBO, he has talked to many general aviation users of our Airport and they are excited about having another FBO. While they are not extremely dissatisfied with Million Air (some are really satisfied), they want that competition and that choice at the

Airport. Part of the Airport Authority's mission is to offer choices at the Airport. And to say that Encore was presented at the last minute is untrue.

Councilman Davis acknowledged that we must rely on the Airport Authority to be our experts, however, a 40-year lease is extremely long and he would prefer that our Chief Financial Officer review the terms of the lease. Therefore, he withdrew his motion.

When Councilman Mumpower asked what complexities would arise if Council delayed the matter for 30 days, Mr. Edwards said that potentially the Authority could lose the deal as they have been negotiating with Encore for a long time. He corrected a statement made by saying that this is a 30 year base lease for $3.5 Million investment initially. In order to get an additional 10 years and an option, they would have to invest another $4.5 Million on top of the $3.5 Million. That results in an $8 Million investment. He said that the Airport Authority is willing to talk to Million Air about renegotiating their lease, but personally he felt to let a tenant try to dictate the terms of a lease of another tenant is inappropriate.

Vice-Mayor Jones moved to approve the resolution authorizing the Asheville Regional Airport Authority to provide a lease term to Encore FBO Acquisitions, LLC that extends beyond the term outlined in the City of Asheville and Asheville Regional Airport Authority Lease Agreement, contingent upon written documented approval by the FAA. This motion was seconded by Councilman Freeborn. This motion failed on a 3-4 vote, with Vice-Mayor Jones, Councilman Freeborn and Councilman Newman voting "yes" and Mayor Bellamy, Councilwoman Cape, Councilman Davis and Councilman Mumpower voting "no."

Mayor Bellamy explained that she voted against the motion as she would like to delay action on this for two weeks in order to have the written documentation in hand from the FAA and allow our Chief Financial Officer to review the lease.

Councilman Newman moved to delay action on this matter for 30 days. This motion was seconded by Vice-Mayor Jones and carried on a 6-1 vote, with Councilman Freeborn voting "no."

Mayor Bellamy asked that when the matter comes back before Council that the letter from the FAA be presented.

Mayor Bellamy said that Council has talked about how to handle the Airport beyond 2018 when our lease is up and the independent Airport Authority. For clarification, Council did receive an update on the independent Airport Authority when we talked about the Water Agreement. When working with other elected officials, there is a process. They have to work with their board and see where they are on issues, so to talk about an issue without having the whole picture is not good, in her opinion. She is looking forward to continuing dialogue. As a matter of fact, she talked to the Chairman of Henderson County at the River Raft Race and set up another meeting just to talk about where Henderson County is going, their involvement in the Airport Authority, and if they would like to continue that initiative. Her main purpose of supporting the idea of an independent Airport Authority is to be more inclusive - to allow Henderson County to come to the table as a full fledged voting member of that body. And if they have other desires at this time, not to pursue that, she can't change that. It's important to her to give them an opportunity to see where they are going and what they want to accomplish. If Council needs a more formal update on where we are, she is willing to get that scheduled as soon as possible. But her goal is not to stop progress at the Airport. So, she asked Councilman Freeborn, Chair of the Airport Authority, to convey to the Airport Authority on her behalf that her delay in the decision was not a not vote of confidence of the Authority, but more of making sure we have the FAA letter in hand, opposed to a voice-mail, and in consideration for other Council members and staff to have time to look at the issue.

G. RESOLUTION NO. 07-165 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE BIG BROTHERS BIG SISTERS 25TH ANNIVERSARY CONCERT

Summary: The consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Big Brothers Big Sisters 25th Anniversary Concert (a fundraiser and education event for Big Brothers Big Sisters) on September 15, 2007.

Big Brothers Big Sisters has requested through the Asheville Parks and Recreation Department that City Council permit them to serve beer and/or unfortified wine at their event and allow for consumption at this event. The Big Brothers Big Sisters 25th Anniversary Concert will be held on Saturday, September 15, 2007, from 12:00 p.m. - 10:00 p.m. at Martin Luther King Jr. Park.

Pros:

- Allows fundraising opportunities for charity
- Generates economic impact for the community
- Provides additional quality cultural programming and diversity

Con:

- Potential for public safety issues

The Asheville Parks and Recreation Department recommends City Council approve a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Big Brothers Big Sisters 25th Anniversary Concert on September 15, 2007.

Councilman Newman moved for the adoption of Resolution No. 07-165. This motion was seconded by Councilman Freeborn and carried on a 6-1 vote, with Mayor Bellamy voting "no."

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III. PRESENTATIONS & REPORTS:

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR THE PROJECT KNOWN AS ZONA LOFTS LOCATED AT 150 COXE AVENUE FOR THE PROPOSED MIXED-USE DEVELOPMENT TO INCLUDE RETAIL SPACE AND 161 RESIDENTIAL UNITS

ORDINANCE NO. 3529 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR THE PROJECT KNOWN AS ZONA LOFTS LOCATED AT 150 COXE AVENUE FOR THE PROPOSED MIXED-USE DEVELOPMENT TO INCLUDE RETAIL SPACE AND 161 RESIDENTIAL UNITS

City Clerk Lipe administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 6:25 p.m.

Councilwoman Cape and Councilman Newman disclosed that they talked to the developer and architect but noted they would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Jessica Bernstein submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Bernstein said that this is the consideration of the issuance of a conditional use permit for the project known as Zona Lofts located at 150 Coxe Avenue for the proposed mixed-use development to include retail space and 161 residential units (Attachments to City Exhibit 3 - Location Map and Aerial Map).

The applicant is requesting review of site plans for a proposed residential condominium building with commercial/retail space on the first story. Pursuant to section 7-5-9(a) of the Unified Development Ordinance (UDO), any residential development of more than 50 units and any mixed-use structure with more than 45,000 square feet located within a half-mile of the Central Business District (CBD) shall be considered as a Level III project and a Conditional Use.

The project area is a 16,089 square foot (0.369 acre) lot located at 150 Coxe Avenue in the Central Business District (Attachments to City Exhibit 3 - Rendering of Proposed Building and Site Plan). The parcel is bounded by Banks Avenue to the north, Coxe Avenue to the west, an existing 3-story structure to the south (Chrysler Building) and Collier Alley to the east. The applicant is proposing a 15-story structure with one below-grade level. There will be 161 residential units throughout 13 stories and a retail shop on the first level. Most of the units range in size from 463 square feet to 969 square feet, with the upper level and penthouse units providing a larger living space. The total gross floor area for the structure is 207,661 square feet and an overall building height of 179.5 feet.

While parking is not a requirement of the CBD, the applicant is proposing 54 parking spaces throughout three parking levels, along with the associated handicapped (4) and bicycle spaces (7). It should be noted that this amount of parking does not satisfy the parking needs of the entire building. Parking will be accessed through two entries, one on Coxe Avenue and one on Banks Avenue. The applicant has appropriately included retail use on the ground level and placed the primary pedestrian entrance on Coxe Avenue, which is designated a key pedestrian street. Street trees are proposed along Coxe and Banks Avenues, along with creating the 10' sidewalks required in the CBD, enhanced with "bump-outs" at corners and curb cuts.

The proposal includes a number of "green" features, including rainwater collection for flushing toilets, a wine turbine, solar hot water, low VOC paint, Energy Star appliances and low flow plumbing features. The goal of these features is to create a situation with 50% less energy consumption than other multi-family projects in the area.

This project provides downtown living at a workforce rate. Price points for the lower units (approximately 100 units) are within $142–242k; the upper units are within $299-499k; and the penthouse properties have yet to be designated in terms of size and price.

Balconies, cornices and structural awning as proposed encroach past the property line. These proposed balconies and architectural elements were reviewed by the Downtown Commission; however the air rights process was not specifically discussed. The applicant will be seeking purchase of air rights or entering into an encroachment agreement.

In seeking approval from the Downtown Commission, the applicant met with the Design Review Subcommittee on 5/2/07and 5/23/07. Rather than seek modifications for inconsistencies with the design and operational standards required in the CBD, the applicant revised the design so as to fully comply with the UDO. Various design recommendations from the subcommittee were taken into account in the redesign however due to the applicant's desire to keep a unique and affordable project, not all recommendations were integrated. Unanimous approval was issued by the Downtown Commission on 6/8/07, subject to the plans and elevations as presented at the review; that price levels are kept at rates as discussed; that green features as presented are all executed and that the pedestrian safety of the driveway entrance on Coxe Avenue is maintained.

At their May 21, 2007, meeting, the Technical Review Committee (TRC) approved this project with the conditions as listed in the staff report. The project received approval (4-0) from the Planning & Zoning Commission on July 12, 2007.

As of the time of this writing, staff has received no communication from adjacent property owners or other citizens concerning the proposed development.

Section 7-16-2(c) of the UDO states that City Council shall not approve the conditional use application and site plan until it make the findings to the seven conditional standards through evidence presented in the staff report and presented as evidence at the public hearing.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   The project will meet State building code requirements and will be reviewed in detail by the Technical Review Committee to ensure compliance with safety requirements.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
   The site is an infill parcel in the south slope area of the Central Business District. The building design responds to the grade changes on the lot through use and access to the building.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
   The parcel for the proposed building is under-utilized. The new use is expected to act as a catalyst for further redevelopment of under utilized properties in the vicinity of the parcel. The project is expected to enhance the values of adjoining properties.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
   The proposed project is located in the Central Business District where there is no height, density or maximum building size limitation. Although this will be the tallest structure in the south slope area it is not the tallest structure in the CBD. Also, this area of the downtown is significantly underutilized and is specifically targeted for this type of development, which is seen as catalytic and will spur additional, similar development.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
   The project conforms to the comprehensive plan and smart growth policies as this proposal is for higher density infill redevelopment in an area with existing supportive infrastructure in an underutilized part of the City. The project employs multiple green

features for energy conservation that correspond to the City's dedication to environmentally-responsible development and supports the livability and vitality of downtown by offering housing at a workforce rate in close proximity to public transit and in a walkable urban location.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
   The project is located in the CBD in an area easily accessed for transportation, life and safety facilities and utility infrastructure.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
   The project is not expected to create traffic congestion or a traffic hazard. Parking is contained on-site for the most part and otherwise will utilize on-street parking surrounding the site. Mixed-use areas such as the CBD can reduce traffic concerns by encouraging people to walk more or use public transit.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros

- This project provides new development in an under-utilized are of the CBD and has the potential to be a "catalyst" for additional growth.
- The majority of the units are identified to be sold at a workforce rate.
- The project integrates a number of green features and environmentally-sensible design practices.

Cons

- Building is significantly taller than any other in the immediate area at this time.
- Parking spaces provided will not satisfy parking needs of entire building.

Staff recommends approval of the project inclusive of the conditions as follows: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; and (5) This project will undergo final review by the TRC prior to issuance of any required permits.

Mr. Rod Kagy, developer spoke in support of the development.

Mr. Bae-Won Kohn, architect, provided Council with several documents (Applicant Exhibit 1) and briefly received the project summary as follows: (1) address is 150 Coxe Avenue; (2) stories will be 1 basement, 15 above-ground stories; (3) occupancy will consist of residential, mercantile, parking garage; (4) construction type is Type I-A (concrete columns and shear walls with post-tension concrete slab); (5) site is 16,080 square feet - 0.369 acre; (6) building footprint is 14,268 square feet; (7) footprint/site ratio is 88.7%; (8) paving area is 2,433 square feet; (9) paving/site ratio is 15.1%; and (10) gross floor area is 215,349 square feet. He then outlined the many green features: (1) energy efficient shell; (2) rainwater collection; (3) solar domestic hot water system; (4) photovoltaics; (5) wind turbine; (6) energy star appliances; (7) environmentally-friendly materials (a) water-based stained concrete floor; (b) bamboo flooring without adhesive; (c) no VOC paint; (d) earth plaster; (e) high efficiency elevators; and (f) recycled concrete

countertop; (8) high efficiency VRV system; and (9) low-flow pumping fixtures. The energy modeling result is (1) average multi-family: 51.3 kBtu/SF/Yr; (2) Zona Lofts: 30.2 kBtu/SF/Yr (60% reduction from average); (3) estimated annual savings of $135,000/year; and (4) estimated 700 square feet condo electricity bill will be $31/mo. He reviewed the ground floor plan, the typical residential floor plan and the building height. He urged Council to support the conditional use permit.

After rebuttal, Mayor Bellamy closed the public hearing at 6:38 p.m.

In response to Mayor Bellamy, Mr. Kohn explained that they have submitted their application for air rights for approximately 600 square feet. In addition, this is not module construction.

Mayor Bellamy urged the developer to keep stormwater on their property during construction.

Councilwoman Cape commended them on their many green features and hoped they set a new bar for the rest of the developments.

Councilman Mumpower appreciated the development growing up in order to reduce sprawl.

Councilmen Newman and Freeborn suggested they partner with public transit, including yearly bus passes in the condominium association fees.

Councilman Mumpower moved for the adoption of Ordinance No. 3529, granting a conditional use permit for the project known as Zona Lofts located at 150 Coxe Avenue for the proposed mixed-use development to include retail space and 161 residential units (finding that the request is reasonable based on the information provided in the staff report and as stated in the staff recommendation), subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; and (5) This project will undergo final review by the TRC prior to issuance of any required permits. This motion was seconded by Councilwoman Cape and carried unanimously.

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B. **PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE INCREASING THE AMOUNT OF TIME A CONDITIONAL USE PERMIT IS VALID**

ORDINANCE NO. 3530 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE INCREASING THE AMOUNT OF TIME A CONDITIONAL USE PERMIT IS VALID

Mayor Bellamy opened the public hearing at 6:49 p.m.

Technical Review Manager Kim Hamel said that this is the consideration of an ordinance amending the Unified Development Ordinance (UDO) increasing the amount of time a conditional use permit is valid. This public hearing was advertised on August 17 and 24, 2007.

Ms. Hamel said that currently, the UDO states that a Conditional Use Permit (CUP) is only valid for one year from the date of City Council approval with an allowance for one 6 month extension by the Planning and Development Director given that a substantial reason is provided by the developer on why the extension is necessary.

Staff was asked by the Planning and Zoning Commission to draft an amendment to increase the amount of time for which a Conditional Use Permit is valid in order to provide more consistency with other approvals where a conceptual master plan is part of the submittal (Conditional Zoning requests).

A large majority of projects that require a Conditional Use Permit are large in size and scale (i.e. Level III projects and development standard bonus, etc.). The submittal process for these projects requires that only a conceptual master plan be submitted for the initial review by the Technical Review Committee (TRC). Once approved by the TRC, the conceptual master plan moves through the public hearing process (review by Planning and Zoning Commission and City Council). If the project receives approval by City Council, the developer is required to resubmit a final "detailed" set of development plans to be reviewed again by the TRC.

Staff has found that the majority of developments where a six month extension was requested are from projects where a CUP was issued. The requests stem mostly from developers needing additional time to line up financing and complete real estate transactions, which in return affects the time needed to develop "detailed" site plans for the final review by the TRC.

Pros:

- Would be consistent with other project types that require City Council approval involving review of a conceptual master plan. (Conditional Zoning approvals are valid for two years from the date of City Council approval.)
- Would allow the development community additional time to complete financial and property transactions without the need for a six month extension request.
- Allows additional time for the development of "detailed" site plans.
- Would reduce the number of projects that require a second review by City Council to simply renew a CUP that has expired.

Con:

- None identified.

On Wednesday, August 1, 2007, the Asheville Planning and Zoning Commission made a positive recommendation to approve the amendment as presented (7-0). There was no public input or opposition from the public at the meeting.

Staff recommends City Council approve an ordinance amending Chapter 7 of the Code of Ordinances of the City of Asheville increasing the amount of time a Conditional Use Permit is valid.

Mayor Bellamy closed the public hearing at 6:50 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Jones moved for the adoption of Ordinance No. 3530. This motion was seconded by Councilman Mumpower and carried unanimously.

V. UNFINISHED BUSINESS:

VI. NEW BUSINESS:

A. ORDINANCE NO. 3531 - ORDINANCE GRANTING A FRANCHISE TO OPERATE A TROLLEY WITHIN THE CITY OF ASHEVILLE

Transit and Parking Services Manager Bruce Black said that this is the consideration of an ordinance granting a franchise to operate a trolley within the City of Asheville.

Asheville Trolley Company LLC, d/b/a Gray Line Trolley Tours of Asheville (herein "ATC") wishes to conduct multiple daily trolley tours of the City of Asheville. Asheville Historic Trolley Company is already currently offering a trolley tour of Asheville under an existing franchise. The original franchise has expired and the company is applying for renewal.

Generally cities franchise certain services which use city roads, rights-of-way, or other city controlled assets in order to exert a measure of control over the particulars of the use to assure the health, safety and welfare of the citizenry. The city is requiring that any tour route be approved by the city traffic engineer such that the operator may not operate or stop where doing so may impede the orderly flow of traffic and create a potentially dangerous situation. Additionally, the comfort of citizens in areas where the tour will go is addressed through the assurances of the operator that the volume of any on-board public address system will not be heard outside the trolley bus. The city is to be indemnified; the vehicles must meet certain minimum standards as will the drivers.

In this case the tour will follow an established route approved by the City's Traffic Engineer. The tour will depart from the Visitor's Center daily every hour on the half hour between the hours of 10:30 a.m. to 3:30 p.m. and operation of the narrated tour is limited to 7:00 a.m. to 8:00 p.m., Sunday through Thursday and between 7:00 a.m. and 12:00 Midnight Friday and Saturday. On City-recognized holidays and days on which City-approved festivals occur in the Central Business District, the operating hours may be extended to 12:00 midnight, regardless of the day of the week.

The hours of operation are not limited to the above for charter operations providing that ATC meets all federal, state and local laws regarding the operation of a chartered vehicle. The franchise fee is one dollar per day of projected operation.

The ordinance is drawn to be as narrowly as possible, applies only to narrated tours, and does not attempt to franchise any other part of the business operation.

Pros:

- Allows the City to control impacts of trolleys on transportation.
- Enhances and promotes the tourist industry
- Exposes tourists to downtown Asheville
- Its history provides competition to other related services

Con: Could impede traffic flow because of continual stops (minimal delay).

Mr. Black said that we did receive a letter from the Chamber of Commerce recommending this franchise.

Staff recommends City Council approve an ordinance granting a franchise to operate a trolley within the City of Asheville.

Mr. Black and Mr. Howard Helmken, applicant, responded to various questions/ comments from Council, some being, but are not limited to: how many trolleys does Asheville

currently have; how many trolleys will Asheville Trolley Company operate; how many trolleys can be on our streets and not obstruct traffic flow; do we have the opportunity to limit the number of trolleys on our streets; are chartered buses franchised; how was the $1 a day franchise fee determined; can the franchise fee be benchmarked against other cities that operate trolleys; how many trolleys are there in Savannah, Georgia; and has this matter been reviewed by the Transit Commission.

In response to Councilman Davis' concerns, Mayor Bellamy suggested that Council consider the issue before Council now because the question of how many trolleys can be on our streets and not obstruct traffic flow is a larger policy direction and should be scheduled for another meeting. She suggested the Transit Commission review the larger issue to investigate whether two franchises in Asheville is enough. Our Traffic Engineer can also determine how many trolleys can operate on our streets without impeding traffic flow, taking care to review the routes to make sure that all routes are not on one street at one time. He can then report back to the Transit Commission who in turn will report back their findings to Council.

Councilman Freeborn moved for the adoption of Ordinance No. 3531. This motion was seconded by Councilman Newman.

In response to Councilman Davis, City Attorney Oast said that the term of this franchise is for one year and if after review of the fee structure, the fee could be renegotiated at that time.

Vice-Mayor Jones explained her concern with the time of the tours, especially at the 7:00 a.m. starting time. Mr. Helmken said that he had no problem with narrowing the hours of the tour from 10:00 a.m. to 8:00 p.m., since their tours will start at 10:00 a.m. and end at 5:00 p.m.

Councilman Mumpower felt that the Transit Commission should have an opportunity to look at this, along with the franchise fee and other franchise terms. He felt that Council should discuss this policy in detail or at least have the Transit Commission look at this first before we move forward.

Councilman Newman said that this is a fairly new idea for Asheville and there is a value for people to park and ride. He felt we can make adjustments as we go forward.

When Mayor Bellamy asked if Mr. Helmken would consider including the block of the YMI Cultural Center in his route, he responded that he would.

Councilman Newman asked for a friendly amendment to narrow the hours of the tour from 10:00 a.m. to 8:00 p.m. Councilman Freeborn accepted the friendly amendment.

Vice-Mayor Jones feels that all the provisions in the lease should be reviewed to see what is fair to the people of Asheville. She hoped that the City's Traffic Engineer really look at the routes of the neighborhoods that are impacted.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Freeborn moved for the adoption of Ordinance No. 3531, narrowing the hours of the tour from 10:00 a.m. to 8:00 p.m. This motion was seconded by Councilman Newman and carried on a 6-1 vote, with Councilman Mumpower voting "no."

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B. CONSIDERATION OF AN APPOINTMENT TO THE AMERICANS WITH DISABILITIES ACT COMPLIANCE COMMITTEE

Vice-Mayor Jones, Chair of the Boards & Commissions Committee, said that the terms of Sherry Fitzpatrick (disabled community representative) and Mary Robertson (disabled community) expired on August 22, 2007.

On August 21, 2007, City Council instructed the City Clerk to arrange interviews for Walter Randolph and William Madison. The City Clerk was unable to contact Mr. Randolph to arrange an interview time.

It was the consensus of City Council to appoint William Madison (disabled community representative) to serve a three year term, term to expire August 22, 2010, or until his successor has been appointed.

It was also the consensus of City Council to re-advertise for the disabled community representative.

C. CONSIDERATION OF AN APPOINTMENT TO THE CIVIC CENTER COMMISSION

Vice-Mayor Jones, Chair of the Boards & Commissions Committee, said that Brian Turner has resigned from the Civic Center Commission, thus leaving an unexpired term until June 30, 2008.

On August 21, 2007, City Council instructed the City Clerk to arrange interviews for Elizabeth A. Jones, J. Michael Burke and John West. Mr. Burke was interested in appointment but was unable to attend the interview.

After Council spoke highly of the candidates, Elizabeth Jones received 5 votes, J. Michael Burke received no votes and John West received 1 vote (Councilman Mumpower did not make a recommendation). Therefore, it was the consensus of Council to appoint Elizabeth Jones as a member of the Civic Center Commission to serve the unexpired term of Mr. Turner, term to expire June 30, 2008, or until her successor has been appointed.

D. CONSIDERATION OF AN APPOINTMENT TO THE BUNCOMBE COUNTY TOURISM DEVELOPMENT AUTHORITY

Vice-Mayor Jones, Chair of the Boards & Commissions Committee, said that the term of Ron Storto (representing the owner or operator of a hotel, motel or other taxable tourist accommodation with 100 or fewer rental units) expires on August 30, 2007.

On August 21, 2007, City Council instructed the City Clerk to arrange interviews for Mr. Storto and Rupa Russell.

Mayor Bellamy said that Mr. Storto was interested in re-appointment; however, he was not able to attend the interview. Ms. Russell withdrew her application. As a result, Council will need to re-advertise for this position. In the past, when a Council member requests to re-open the process, Council has done so. And since we did have a request, we should honor that request.

Councilman Mumpower asked why Council does not want to just reappoint Mr. Storto. It has been historical policy that if we have a person serving in good fashion, with good attendance, then we reappoint them. He thinks we are insulting our board and commission members by altering the policy and politicizing the process.

Mayor Bellamy said that as of the election of the last Council, that process has changed based upon several past decisions made by Council. And, since it is not in writing, that Council

cannot bind a future Council. There has been a request to open this up and Council should honor that request.

At 7:17 p.m., Mayor Bellamy announced a short break.

VII. OTHER BUSINESS:

A. ZONING ORDINANCE WORDING AMENDMENT EFFECTS AND UPDATE

Interim Planning & Development Director Shannon Tuch said that this is a review the significant Unified Development Ordinance (UDO) amendments that have been adopted since fall of 2006. This staff report is intended to summarize the amendments; this information will be supplemented by illustrations of the cumulative effect at the Council meeting.

In the summer of 2006 the City of Asheville hosted a public forum where all citizens and interested parties were invited to participate in a discussion regarding development activity in Asheville. A common comment from the community was interest in revising and updating the UDO. Additionally, on August 22, 2006, Dr. David W. Owens, professor of public Law and Government at UNC Chapel Hill delivered his report recommending UDO amendments to provide greater clarity as to policy intent. As a result of this interest and information, the Planning & Development department began a lengthy and comprehensive initiative to amend certain sections of the UDO. The following information is intended to summarize the result of many of those amendments and is grouped according to common development categories; however, many amendments influence more than one category.

Commercial Development

Some of the more significant code changes that affect commercial development include:

- Landscaping - additional landscaping material is required above prior standards. Buffer requirements have been increased, but buffer categories have been reduced from four to two and buffers are now required based on zoning districts rather than land use. The requirement for a 5 foot planning strip between commercial developments has been eliminated. The new requirements are simpler to use and understand.

- Open space - the threshold for applying open space standards has been reduced. Open space requirements now distinguish between urban and suburban open space. A fee-in-lieu option has been added to provide developers and property owners with more flexibility in site design. Compliance with the city Greenway Master Plan is now mandatory, but development bonuses are established if open space above the base requirement is provided as a result of complying with the Greenway Master Plan.

- Nonconformities - Full site compliance is required once a value threshold for new site construction is reached; previously, only landscape, parking and buffer standards were required to be met, but now buildings must be brought into compliance with setback, height and other standards. (This can be thought of as the "Walgreens" amendment.)

- Driveway and street intersection sight distance - this recent change distinguishes between urban and suburban contexts in driveway design and building placement, as well as explicitly providing the city traffic engineer with the ability to take site conditions into consideration in determining how driveways are designed and buildings are oriented. This amendment addresses sight distance concerns raised with regard to Staples and GreenLife.

Multifamily Development

Some of the more significant code changes that affect multifamily development include:

- Open space - the threshold for applying open space standards has been reduced. Open space requirements now distinguish between urban and suburban open space. A fee-in-lieu option has been added to provide developers and property owners with more flexibility in site design. Compliance with the city Greenway Master Plan is now mandatory, but development bonuses are provided if open space above the base requirement is provided as a result of complying with the Greenway Master Plan.

- Landscaping – additional landscaping is required through a new building impact requirement but is felt to be off-set in some cases by buffers being eliminated between like zoning districts. Building Impact landscaping and required buffers may overlap required stream buffers.

- Development standards bonuses – adopted last year, this amendment allows developments having exceptional design characteristics to receive density and height increases through a conditional use permit process. Projects approved using this process includes: Thoms Estate, Weirbridge, Skylofts, Davenport Subdivision, Sunset Park, and Estelle Park Subdivision.

Single-family Development/Subdivisions

Some of the more significant code changes that affect single-family development/subdivisions include:

- Gated developments - now prohibited.

- Steep slope situations - while the new steep slope and ridgetop requirements apply to all development types, the chief impact will be on single-family development and subdivisions. The new requirements include stronger density and grading standards, a new light reflectivity standard, and height limitations. Additionally, density bonuses are provided when developments concentrate site disturbance on less steep slopes and/or conservation areas are established.

- Four-lot subdivisions - subdivisions of up to four lots may be designed with a reduced access requirement. In effect, a driveway access is allowed instead of a full street to promote additional compatible infill development.

- Cottage developments - new standards have been created to allow dense, small-scale developments consisting of smaller single-family homes.

- Retaining walls - while the new retaining wall requirements apply to all zoning districts and development types, they will most frequently affect subdivisions due to road construction. These new standards will result in improved visual appearance of retaining walls.

- Landscaping – tree save areas covering a minimum of 30% of the total site area are now required. Tree save areas may overlap with open space areas or stream buffers, and may be located on private property.

- Subdivision requirements - new subdivision requirements will result in more uniform lot configurations and allow existing nonconforming lots under single ownership to be built on separately. Additionally, subdivisions of more than 50 lots are now subject to the Level III conditional use permit process, requiring Council review and approval.

Mixed-use Development

Some of the more significant code changes that affect mixed-use development include:

- MXD zoning district - this proposed zoning district creates the opportunity to consolidate several of the city's new urbanist/form-based zoning districts into a single district. Additionally, the MXD district allows some tailoring of zoning requirements to specific areas, such as Merrimon Avenue.

- Open space standards - adjustments have been made to distinguish between urban and suburban open space requirements, eliminating the prior disincentive for denser development.

- Adaptive Re-Use – the creation of this new overlay district allows for the re-use of character defining residential structures for very low-impact non-residential (and residential) uses through the preservation and maintenance of the structures.

- General adjustments - adjustments have been made to the Urban Village District, among others, to address fenestration and topographic issues identified as specific projects are reviewed.

Natural Resources

Some of the more significant code changes that affect natural resources include:

- Stormwater – led by the city's Engineering Department, this current amendment's proposed regulations will enhance the city's ability to effectively manage the impact of stormwater on the natural environment and infrastructure.

- Steep slope and ridgetop regulations - the new regulations will reduce the impact of development on these sensitive areas from both environmental and viewshed protection perspectives.

- Landscaping - additional landscaping material is required above prior standards. Greater and more specific tree protection standards have been created.

- Open space - the threshold for applying open space standards has been reduced. Open space requirements now distinguish between urban and suburban open space. Compliance with the city Greenway Master Plan is now mandatory, but development bonuses are established if open space above the base requirement is provided as a result of complying with the Greenway Master Plan.

Other

- Enforcement – Enforcement officers have been afforded new levels of protection not previously provided and revisions to the delivery requirements for notices and citations have allowed for increased productivity and reduced delays in achieving compliance. Additionally, fines for certain violations have been raised significantly, providing a more effective deterrent.

Staff is seeking direction from Council on areas for future regulatory and planning focus. The cumulative effect of the significant UDO amendments to date is to clarify Council objectives for natural resources, commercial, residential, and mixed-use development. This accomplishes a major recommendation of the Owens report on how to improve development management. It also triggers a major commitment of staff training, process changes, and community education in order to satisfactorily implement the amendments.

Going forward, there are additional UDO adjustments to be considered. The Owens report recommended regular reviews and updates to achieve closer alignment of the UDO with policy intent. Our work plan for this fall/winter already includes facilitating further review of stormwater regulations, mixed use districts, and possible sign code revisions. Staff will also be involved with downtown master planning and "housekeeping" revisions to the UDO, ultimately, we would like to reach a point of review where the focus of staff UDO efforts is on improving the clarity of the document, including the addition of illustrations and form-based elements.

Out of the 27 amendments in all (20 of which are completed), she feels that this is a very aggressive undertaking and has required a significant amount of time and dedication from the department as well as many others in the community, including Council.

Since initiatives like these almost always result in some expression of concern from the community because it is a lot to absorb and a lot to keep track of, she explained how the community can learn more, keep track and find out how the issues affect them.

Although all sites are unique, she showed a completely generic piece of property and graphically demonstrated some of the effects of the recent amendments.

The recent initiatives have been very aggressive and to maintain the initiatives require some prioritization. The Planning Department has 31 full-time employees - 22 work in Planning Services and there are 10 planners. Of those 10 planners, only 2 are in management positions involved with major initiatives. Major initiatives require significant amount of time from management positions.

Director of Transportation and Engineering Cathy Ball reviewed with Council a slide which demonstrated some of the planning and management that goes into just one of those major amendments (stormwater and erosion control ordinance), which is only part of one of these major initiatives.

Ms. Tuch continued stating that some major initiatives include, but are not limited to: annexation; development review; small area plans; downtown master plan; code amendments; boards and commissions; enforcement; zoning studies; recruitment and training; communications; river district planning, city-owned properties; committee work, stakeholder meetings.

Future major amendments include (1) consolidated zoning districts; (2) form based code; and (3) lighting sights.

Future moderate amendments include (1) updates to Technical Review Committee rules and regulations; (2) digital billboards; (3) Level III thresholds; and (4) public safety.

Future minor amendments include (1) large retail structures; (2) Urban Village height changes; and (3) general housekeeping.

She said that her preferred definition of planning is "The process of setting goals, developing strategies, and outlining tasks and schedules to accomplish the goals, and making decisions on allocating its resources to pursue this strategy, including its capital and people."

At this time, staff is seeking direction on the priorities of Council for minor and major adjustments to be undertaken in the future.

Mayor Bellamy said that the Planning & Development Department has done a lot over the last year focusing on a lot of the goals of Council based upon our 2006 and 2007 retreats. We have addressed a lot of the concerns we have heard from the community as far as development

in our community. In the coming months, it looks like we will see more important issues being addressed. She asked the following items mentioned in Professor David Owens' report be addressed: (1) the sign height limit for attached signs; (2) graphics so people can understand the limitations with those attached signs; (3) more definitive standards for what design elements are required to allow street frontage and setback relief and talk about what areas are permitted to have a setback relief - in the Mixed Use District, some of that definition has been defined for that area, but we don't have it in Community Business I or Community Business II Districts; (4) additional ordinance clarification regarded mandated setbacks for other areas than the Mixed Use District; (5) address in the UDO where the ordinance terminology and common usage of terms may not be clear; and (6) revise the alternative compliance section of the ordinance regarding buffers.

Ms. Tuch said that there has been some interest in revamping our entire sign code and so do we want to take the opportunity to go ahead and examine the whole code, in which case we would move that from a minor initiative to a major initiative. That is the kind of feedback they are requesting.

Mayor Bellamy asked that Council give Ms. Tuch all their proposed UDO amendment requests now and then Ms. Tuch bring them back to Council to prioritize.

Councilwoman Cape explained how her overall interest is understanding what the goals of each of our code zonings are and making sure that within those coded areas we are not in conflict with the goals we are trying to accomplish. She hoped the results would be easily communicated to the public and the people who are interested in developing.

Ms. Tuch said that when she talked about the major initiatives, one of the initiatives that they had really identified internally with staff was to improve our communications with the public. We have some ideas, but that is one, unfortunately, that has been put on the back burner for awhile, but we have a lot of interest in pursuing.

Councilman Freeborn said that some suggestions that Dr. Owens gave us were (1) to clarify Council's intent on critical issues; (2) provide modifications to the development review process; and (3) establish a regular process for ordinance clarification and improvement. When this Council came into office they held a series of forums and he felt that is something we should establish as a routine policy for going forward. We should periodically (every 2 or 4 years) outline as a community our top three planning and development priorities; establish the goals that we want as a community in reference to those priorities; and then allow staff to work with the focus groups through public outreach and bring back a series of updates to the UDO in relation to those priorities.

Councilman Newman said that in addition to the freestanding signage issue, we should make it clear that the background of a sign does count. In addition, he believes it is important for the City to define its role in a community-wide process for growth and development.

Vice-Mayor Jones wanted to make sure that we are having a conversation with the wayfinding initiative. She felt that might be a major initiative.

Councilman Davis agreed with Vice-Mayor Jones and that our sign ordinance might be in conflict with the wayfinding initiative. He felt we should hold off on making big changes to our sign ordinance at this time.

Councilman Mumpower said that more rules mean more enforcement problems; and more enforcement problems means more staff; and more staff means more taxes. He felt we are in danger of creating an elite, expensive community that is affordable only to the wealthy and the subsidized. He felt we are creating more and more levels of bureaucracy and control.

Mr. Jay Quinn suggested that as Council looks at these issues that they (1) review the delegation of authority by City staff; and (2) consider opportunities for meaningful public comment at key stages of important permitting determinations.

Mr. Joe Minicozzi suggested Council consider zoning amendments at one time a year.

B. PLANNING & DEVELOPMENT PROPOSED DEVELOPMENT POLICIES

Councilman Newman suggested the following proposed land use and community development policies for Asheville.

1. **Closing the loophole on big-box development in the UDO**. Our Unified Development Ordinance contains a cap of 75,000 square on the size of large retail stores. However, it contains a loop-hole that allows already large retail establishments to turn into "mega-big box" facilities of up to 200,000 square feet. He and Councilman Freeborn propose that we close this loop-hole.

2. **The downtown master planning process**. As part of our 2007-2008 budget, City Council approved funding for a new Downtown Master Plan to guide growth and development in our city center. I would like for Council to provide some direction on what are some of the questions we would like to see considered through this process, such as:

   * What policies would allow Asheville to create more workforce and middle-class housing in downtown?
   * Should Asheville create height limits in the downtown area for new development?
   * What policies can help assure that our downtown remains a strong, ***locally owned*** business district? Specifically, should Asheville consider adopting some type of formula ordinance? For more information on formula ordinances, see **http://www.newrules.org/retail/formula.html**.
   * What would be an ideal layout for public parks and green spaces in our downtown?

3. **Enforcement of our building code**. He and Councilwoman Cape are interested in how we can encourage new development in Asheville to be as energy efficient as possible. Several people have commented on how the existing state codes are actually quite strong on energy efficiency, if they are properly enforced. We would like to have some discussion about whether we are fully utilizing the green building elements that exist in the existing state code and, if not, what types of resources or training our staff may require to achieve the full benefits of the existing standards.

4. **Local tax incentives for renewable energy.** Legislation pending in the state Legislature will give Asheville the authority to provide local tax incentives for to encourage environmentally sustainable building. Considering the significant energy savings they produce, one of the best technologies available is solar-panels for heating water. If a high percentage of new development in our community incorporate this technology, it will dramatically reduce the need to build additional fossil-fuel power plants in our region. He and Councilwoman Cape would like to discuss whether Council would give direction to the Sustainable Energy and Environment Advisory Committee to explore policy options for creating effective economic incentives for renewable energy in new developments in Asheville.

5. **Clarify height limits in the urban village zoning district**. Developers are proposing the construction of two thirteen story buildings on the Deal Buick site on Merrimon Ave. While many aspects of the proposed redevelopment of this site are very attractive, these two large buildings are out of character with this area of the city. He supported City Council amending our ordinance to lower the normal threshold for building heights so that

developers do not get an unrealistic sense of what will be approved in areas zoned urban village.

He said that if these points are worthy of consideration, he asked if Council would refer these items to the Planning & Zoning Commission to review and come back to us with a recommendation. At that time, Council can then make a final decision on whether to make the amendments.

Councilman Freeborn supported these items be included in the work plan that Interim Director of Planning & Development will bring back to Council.

After a brief discussion about these items being included in the work plan or moving forward now, Mayor Bellamy confirmed that by voting to send these to the Planning & Zoning Commission now, we are asking Planning staff to put everything else aside, because the Commission cannot review these without staff assistance.

Councilman Newman moved to ask the Planning & Zoning Commission to look at the question of closing the loop-hole on big-box development in the UDO as described above. This motion was seconded by Councilman Freeborn and carried on a 4-3 vote, with Mayor Bellamy, Councilman Davis and Councilman Mumpower voting "no."

Councilman Newman moved to ask the Planning & Zoning Commission to look at the question of re-establishing the height limits in the Urban Village District to their original standard as described above. This motion was seconded by Councilman Freeborn and carried on a 4-3 vote, with Mayor Bellamy, Councilman Davis and Councilman Mumpower voting "no."

Councilman Newman moved to direct the Sustainable Energy and Environment Advisory Committee to (1) look at the legislation that was recently passed that enables Asheville to provide additional incentives for green building and renewable energy; and (2) explore policy options for creating effective economic incentives for renewable energy in new developments in Asheville, as described above. This motion was seconded by Councilwoman Cape and carried unanimously.

Mayor Bellamy explained that she didn't support the two motions because staff has asked Council to give them the UDO amendments they would like to see for scheduling. Then they were going to bring those back to Council for prioritizing. She wished we would have considered that request.

C. RESOLUTION APPROVING TRAFFIC CALMING DEVICES ALONG MAXWELL STREET TO MINIMIZE TRUCK TRAFFIC

City Traffic Engineer Ken Putnam said that this is the consideration of a resolution approving traffic calming devices along Maxwell Street to minimize truck traffic.

Greenlife Grocery is currently served by two loading dock areas, one with a direct access onto Maxwell Street and one with access on-site. Although, the larger trucks that use the on-site loading dock area arrive and leave via US 25 (Merrimon Avenue), they typically use part of Maxwell Street to maneuver into position. In addition, the smaller trucks that access the loading dock area with the direct access onto Maxwell Street typically stage along Maxwell Street to wait their turn to maneuver into the loading dock area. Some of the drivers of these trucks will go ahead and unload before they can maneuver into the actual loading dock area.

A conceptual traffic calming plan has been prepared to minimize truck activity along Maxwell Street. It should be noted that if this plan is approved to move forward to the design and construction stages, it will be crucial to accommodate emergency *(fire and ambulances)* vehicles as well as sanitation vehicles *(private and city)*.

The conceptual plan includes four options; specifically, a *"blocking"* option and three *"restricting"* options. These options are further described as follows:

1. The *"blocking"* option is the most restrictive since it would revise the existing access point onto Maxwell Street to serve right turn egress movements only and it would prevent the larger trucks from using Maxwell Street to maneuver into the on-site loading dock. Although the smaller trucks would still be able to use Maxwell Street to gain access to the loading dock area that has direct access onto Maxwell Street, their movements would be restricted due to the proposed islands. The estimated cost to construct this option with City forces is $35,000 to $40,000.
2. Option A, which is one of the *"restricting"* options, would enable the larger trucks to use Maxwell Street to maneuver into the on-site loading dock but it would prevent these trucks from using Maxwell Street to enter or leave the immediate area. The effect on the smaller trucks trying to access the loading dock area with direct access onto Maxwell Street would be the same as in the *"blocking"* option. The estimated cost to construct this option with City forces is $25,000 to $30,000.
3. Option B, another *"restricting"* option, is very similar to Option A and it would produce the same results as Option A. It uses a different island treatment on the eastern end of Maxwell Street. The estimated cost to construct this option with City forces is $25,000 to $30,000.
4. The third "restricting" option is the least restrictive and it simply uses additional on-street parallel parking to restrict truck traffic. The estimated cost to construct this option with City forces is less than $1,000.

Pro:

- Restricts *(minimizes)* truck traffic.

Cons:

- Hinders emergency vehicles.
- Hinders delivery trucks to existing homes.
- Impacts deliveries to Greenlife Grocery *(Does not eliminate deliveries along Maxwell Street)*

In an effort to restrict (minimize) delivery trucks from using Maxwell Street, staff recommends that the City Council approve a resolution to install traffic calming devices along Maxwell Street.

Councilman Freeborn said that Council has spent a great deal of time looking at this issue and it is still creating conflict with adjacent neighbors. While Greenlife is a benefit to the neighborhood, there would be ways that Greenlife could proactively re-design their site to minimize those conflicts. He and Councilman Newman went to great lengths, with City staff, to work with Greenlife to come up with a solution that they thought everyone could support. We have not seen any action taken by Greenlife and therefore he hoped that Council would move forward with one of the traffic calming options. He supported the blocking option.

Councilman Newman said that the re-design idea was not a perfect solution but it would go a long way to take most of the truck traffic off Maxwell Street and it would restore the buffer. He was supportive of that idea. His concern is that some months have gone by and there has not been any action by Greenlife to move those plans forward. Therefore, he thinks that we do need to move forward with one of these traffic calming measures that help protect the neighborhood from the large trucks. However, it remains his hope that we can move forward with the re-design and have a positive outcome for everyone involved. If that re-design can happen, he felt we needed a specific timeline for that to happen.

Mr. John Swann, one of the two owners of Greenlife Grocery of Asheville, said "I want to thank you for the opportunity to comment on the resolution approving traffic calming devices

along Maxwell Street. Since our company will likely be adversely affected by any of the proposed traffic restrictions, we have concerns regarding this resolution.

"First, the 'blocking option' - where tractor-trailers are physically restricted from using Maxwell Street to turn around and approach our loading dock, I'd like to point out one simple fact and ask one simple question about this option. The fact is that there is no way to turn a tractor-trailer around in our parking lot without executing the three-point turn onto Maxwell Street. So, here is my question for Mr. Putnam, Council, and others who think the solution is simply to block tractor-trailers from Maxwell Street: What is your proposed solution for how to turn a tractor-trailer around and get it back out onto Merrimon Avenue under this option? Has anyone thought through this problem and the traffic disaster this would cause, not only in our parking lot, but at our Merrimon Avenue entrance as well? Traffic in our parking lot is regularly backed up onto Merrimon Avenue as it is. The last thing we need is for this solution to get worse, which it would surely do under this option, while we unload tractor-trailers in our parking lot with a fork lift and the big trucks have to back out onto Merrimon because there is no way to turn them around.

"Furthermore, in past correspondence and at Council meetings we have mentioned the potential issue of interference with interstate commerce if our large trucks, nearly all of which come from out of state, are prevented by the City from getting to our loading dock. We truly don't want to go there and we hope that Council doesn't want to either, but we will have to address this issue if the "blocking option" is implemented.

"For these reasons, we have faith that Council will have the wisdom not to vote for the 'blocking option.'

"So, onto the restrict options. Restrict options 'A' and 'B' are essentially the same plan, with traffic islands in the middle of Maxwell Street at the intersection of Broadway, and two minor variations in island configurations in Maxwell Street located in the block just to the north of Greenlife, and two "bump-out" islands jutting out into the street along Greenlife border of Maxwell Street.

"Both of these options leave enough room for tractor-trailers to continue to use Maxwell Street to turn around and approach our loading dock. The purpose of Restrict options 'A' and 'B' is clearly to stop tractor-trailers from approaching or leaving Greenlife via Maxwell Street. Well, in fact, Greenlife has not had a tractor-trailer come up or exit on Maxwell Street for at least a year now, maybe two. Strategically placed and permanently parked vehicles owned by Mr. Reid Thompson quite effectively block a tractor-trailer's ability to exit via Maxwell Street and the big truck drivers avoid the turn off of Broadway onto Maxwell Street like the plague because it is impossibly tight from either direction, and they have been repeatedly directed by Greenlife management not to use Maxwell Street as an approach or exit route. We have had approximately 1,000 tractor-trailer deliveries to Greenlife during the past year, with none of them using Maxwell Street to approach or leave the store that I know of. So the islands called for in Restrict options 'A' and 'B' don't really affect tractor-trailers because they don't use those parts of the street anyway. And the small delivery trucks, which are no bigger than the garbage or fire trucks that Mr. Putnam has stated, 'will be crucial to accommodate', will not be affected by the traffic islands. Could it be that Council is proposing to approve spending $25,000 to $30,000 to fix a problem that functionally doesn't exist?

"Which leaves Option 'C'. According to Mr. Putnam, under all the options, 'smaller trucks would still be able to use Maxwell Street to gain access to the loading dock area that has direct access onto Maxwell Street', yet he also states, as a 'pro' for his plan that it 'restricts (minimizes) truck traffic.' I submit that it may restrict but it will not minimize truck traffic. If delivery drivers know anything, it is how to drive around things, be they traffic islands or parked cars. They do it every day while moving through our parking lot. And it is their job to deliver their goods to our store. They will get to our loading bay; more parked cars or bump-out islands will just make it a little harder to get there. What these changes will do is increase the risk of traffic accidents along

that stretch of Maxwell Street and significantly obstruct the traffic flow entering and exiting our parking lot from Maxwell Street, which is already an issue with our customers and neighbors. Furthermore, it is highly likely that any parking spaces that are created alongside our store will result in another scene like this: a picture I took yesterday of a seemingly abandoned truck that Reid Thompson has kept permanently parked on Maxwell Street for two years now - one of two vehicles that Mr. Thompson keeps permanently parked on the street, in his effort to impose his own 'traffic calming' measures on the neighborhood, whether the neighbors like it or not (and from what we hear from the neighbors, they do not like it and would rather see it removed).

"There are also the cons that Mr. Putnam mentions in his proposal: (1) hinders emergency vehicles; and (2) hinders delivery trucks to existing homes.

"And I would add a couple of cons that Mr. Putnam may have missed: (1) hinders traffic flow not just from Greenlife delivery trucks, but for everyone who uses or lives on Maxwell Street; (2) further reduces Maxwell Street parking to allow for the width of the traffic islands; and (3) spends thousands of taxpayer dollars to solve problems that functionally don't exist.

"I would also like to add that this whole topic may be a moot point in a few months, anyway. You all know that Greenlife owners, City staff and two members of Council have been working for a year now on a plan that would eliminate all tractor-trailer traffic from Maxwell Street by allowing them to turn around and approach our loading dock from within our parking lot, and further, would significantly reduce the amount of small truck traffic on Maxwell Street as well. This plan would also create a larger buffer zone between our loading dock and Maxwell Street - a goal which many in our neighborhood and city agree would be a highly desirable outcome, including ourselves. We presented that preliminary plan to Council at the February 27th meeting.

Following the general sense of approval from Council for the plan at that meeting, we took the next step of working that plan into the larger expansion plan that we are developing for the property, which involves a substantial addition to the store and more parking. We also began negotiations with the owners of the property, since we do not own it ourselves, which were delayed due to the owners being out of the country on a prolonged vacation at that time. We are a small company, with just my partner and I involved in company planning. This design and negotiation process has taken longer than we or perhaps you would have wished. However, we believe that it is disingenuous to say that 'Greenlife Grocery has not moved forward with a plan of action', as is stated in your resolution. By the fact that this resolution is even on the agenda for tonight's meeting is evidence that some members of Council doubt our sincerity and question the veracity of our efforts to implement the plan. Please be assured that my partner and I are dead serious about implementing the plan, not only because it addresses the Maxwell Street truck and buffer zone issues, but also because Greenlife badly needs the additional loading capacity that the plan provides to better handle the huge volume of business that we are experiencing. The plan is a win-win solution for both the neighborhood and Greenlife, and we support it wholeheartedly.

"However, you also know that on April 20th, Mr. Reid Thompson brought a lawsuit against both the City of Asheville and Greenlife. We decided at that time not to move forward with the plan or make any public statements until our lawyers and our insurance company's lawyers had the chance to review the case and give us their opinion, a process which took several weeks. I advised you on August 10th that one potential outcome from this lawsuit could be that we would have to restore our parking lot entrances at Merrimon and Maxwell Street to the original configuration that existed when we opened the store, making the new plan that we have worked so hard to pull together irrelevant, and any money spent on its development wasted. Consequently, I also advised you at that time that Greenlife would not move forward on the project until that contingency was addressed by the judicial process. Had Mr. Thompson not brought this lawsuit against Greenlife, we would have been much further down the road to implementing the plan than we are today, and his lawsuit has been the sole cause of the delay.

"That said however, I am announcing tonight that the owners of Greenlife have decided to move ahead with the design, review, re-zoning, and permitting phases of the project. We do this based totally on the good faith that we will not have to reconfigure our parking lot entrances under a court order resulting from the lawsuit. We have, from the beginning, tried our best to be good neighbors to the people who live on Maxwell Street and to the City of Asheville as well. We have tried to make the best out of a difficult delivery configuration, and feel that we generally have managed it well. However, there is obvious room for improvement, and we do not want the considerable progress that has been made to permanently solve the truck delivery and buffer zone issues on Maxwell Street to be wasted. Consequently, we have directed our architect to immediately begin the final design, review, re-zoning and permitting process for the new Greenlife loading dock and truck delivery configuration. We plan on having the formal plan ready for review by the City, along with the request for re-zoning, as soon as the architects can complete their work.

"We ask that Council postpone any action on the resolution to approve traffic calming devices along Maxwell Street and to allow my partner and me to move ahead with the development of the plan to solve the Maxwell Street delivery and buffer zone problems for once and for all. We appreciate that Council wants to be seen as doing something about the Maxwell Street issues, but this resolution is not constructive towards that end and only serves to needlessly waste taxpayer money and further complicate our efforts towards implementing a long-term solution to the Maxwell Street issues.

"Thank you for allowing me the opportunity to comment on this resolution. If you have any questions, I would be glad to try and answer them." He then presented Council with a copy of the proposed new loading dock configuration dated February 27, 2007.

Rev. Christopher Chiaronmonte encouraged Council postpone action on this resolution to see what the judicial system will say.

Mr. Joe Minicozzi, President of the Coalition of Asheville Neighborhoods, said that with the traffic calming measures, one thing that can happen immediately is to give back all the on-street parking on Maxwell Street. That would go a long way to help eliminate the truck traffic on the street without any big expenditure in costs.

A taxpayer in the City of Asheville urged Council to send a bill to Greenlife to has agreed to pay for the damage their delivery trucks have done to the sidewalks.

Upon inquiry of Councilman Newman, Mr. Swann confirmed that he will pay for the damaged sidewalk. City Manager Jackson said that they will follow-up on that.

Councilman Newman supported pursuing the re-design and asked for a timeline when the plans will be filed with the City. Mr. Swann responded that he was unable to give a specific date because he didn't know how long it would take his architect to draw the plan or how extensive the City's application process would be.

Councilwoman Cape personally empathized with Greenlife at this point having a lawsuit stand in their way. She could understand them not wanting to commit to something that can be turned around. She personally felt that that Greenlife and the Staples issues have not moved forward because of the lawsuits filed. She hoped that Greenlife will move forward in an expedient manner to solve the problem. She supported the City returning the on-street parking and asked that the City's Traffic Engineer make sure that is a safe option to utilize.

In response to Councilwoman Cape, City Attorney Oast said that there is a hearing on September 5, 2007, the result of which could be that one of two legal actions pending is dismissed.

In response to Vice-Mayor Jones, Interim Planning & Development Director Shannon Tuch said that for a conditional zoning application, we do allow the submittal of a conceptual plan. Given the information they have already developed with the loading dock configuration, etc., she estimated it would take approximately 60 days or less for them to submit the information to the City.

In response to Councilman Mumpower, City Manager Jackson said that enforcement action is being taken regarding the abandoned vehicle on Maxwell Street.

There was a brief discussion, initiated by Councilman Newman, about restoring the on-street parking on Maxwell Street. Mr. Putnam said that the City hasn't restored any parking on Maxwell Street, however, he will work closely with Greenlife to determine the approximate nine parking spaces that can be restored as he does advocate on-street parking as a traffic calming method.

It was the majority of Council's consensus to (1) support the restoration of the on-street parking where appropriate, with Mr. Putnam working with Greenlife; (2) encourage Greenlife to proceed with the re-design and submit their conditional zoning application to the City within 45 days; and (3) instruct Planning staff to bring this matter back to Council if the conceptual plans have not been filed within 45 days for further discussion of possible options for traffic calming.

Mayor Bellamy understands the larger picture and how the lawsuit did impact the speed in which Greenlife was moving on this issue. One of the things that is a testament to your location is that you are always busy and that tells me that people in Asheville and Buncombe like that you are in the community. Unfortunately we have had issues on the process and hopefully this will end the issues that we have had. We are working on the Unified Development Ordinance (UDO) and are making a lot of changes. We have shifted a lot of positions. We are working to get to a better place and it sounds like there are some compromises that are being made. We are looking for Greenlife to follow through for the application to be submitted for the reconfiguration of the parking and the property, and staff will continue to work on the UDO to make some changes.

D. STAPLES UPDATE

From staff report: "At City Council's January 12, 2007, meeting, staff provided Council with an update on discussions with Staples regarding site modifications at the Merrimon Avenue store. The update was being made to City Council pursuant to a letter sent to Staples on December 12, 2006, from Mayor Bellamy on behalf of City Council.

On the afternoon of January 12, the City received correspondence from Staples' Vice President of Real Estate Ted Frumkin stating the organization's intent to plant additional landscaping around the store in order to soften the look of the building to the street. In the same letter, Mr. Frumkin explained Staples' intent not to adjust signage around the building.

Since the January 12 update, Mayor Bellamy has requested via City's Office of Economic Development a face-to-face meeting with Staples executives at their corporate headquarters. Staff has contacted Staples for a meeting date via telephone or e-mail seven times between June and August but has been unsuccessful in securing one to date.

In the early spring timeframe, Staples installed additional landscaping around the Merrimon Avenue store as described in Mr. Frumkin's January correspondence. Three months after the initial planting, Staples had to replant Holly trees, bushes, and the Virginia Creeper. Mr. Frumkin e-mailed Mayor Bellamy about the need to replant the landscaping as well as other measures the store has taken to guard against vandalism on June 8, 2007.

Staff is continuing to pursue a meeting date with Staples representatives. A recent response from Mayor Bellamy to Mr. Frumkin conveys an attempt to meet before the August 28 update to City Council."

Mayor Bellamy said that since our last update on Staples in January, she has attempted to contact Staples representatives on numerous occasions to arrange a meeting to discuss their position on the building's signage. As you remember, Staples sent a letter to the City on January 12, 2007, stating that they would add landscaping to their property on Merrimon Avenue but were not willing to consider changes to their signage. In the last several months, staff has also tried to contact Staples on seven separate occasions - and even probably more than that - to schedule a meeting. We have had no response from Staples until today when she was able to connect with Paul Capelli, a representative from Staples' public relations division. She personally called Mr. Capelli since he was quoted in today's Asheville Citizen-Times story that stated Staples was going to meet with her in the coming weeks. She had not been contacted by Staples prior to the story running in the paper and so she wanted to reach them to verify the news. She spoke with Mr. Capelli at 4:45 this afternoon and he stated he would arrange a date for her to meet with Mr. Ted Frumkin, who is the Vice-President of Real Estate for Staples. She told Mr. Capelli she would make herself available for a meeting as soon as September 4. She also proposed several other dates including September 7, 10 and 12. Mr. Capelli said he would confirm a meeting date by the end of this week. Although she is disappointed it has taken this long to arrange a meeting, she is committed to reopening the dialogue with Staples on concerns that have been raised by the community. She will keep City Council informed when a meeting date is confirmed. After that meeting, she will place the item on the agenda to update Council and the public.

Council members voiced their opinion on the statement in which Staples alleges that someone poisoned their landscaping.

In response to Councilwoman Cape, Mayor Bellamy said that in the meeting realistically we can work on two issues - signage and landscaping. She doesn't have any expectation that they will move their building back 15 feet. She did ask the Planning Department, in earlier discussion tonight, to look at the signage issue.

In response to Mayor Bellamy, City Attorney Oast said that in respect to signs there is some statutory authority and case law to allow us to acquire signs be amortized. He will check on the details of that. He explained what amortization means, as it is usually implemented with billboards.

Mr. Joe Minicozzi, President of the Coalition of Asheville Neighborhoods, presented Council with a compromise they recommended regarding Staples. Regarding the community filing lawsuits, he explained how they followed the law. Speaking on Mr. Reid Thompson's behalf he said that he was forced to file a lawsuit because of the statute of limitations. They did try to come before Council to seek a remedy first.

Councilman Freeborn recommended that we use the compromise Mr. Minicozzi presented as the point of discussion with Staples.

Mayor Bellamy discussed with Mr. Minicozzi statements made on the Coalition of Asheville's website along with wording from Professor Owens' report regarding the Staples issues.

Mayor Bellamy hoped that if Staples compromises on the sign and landscaping, she hoped Council would say this is over. The City has adopted 22 UDO amendments in the last year and so Council has not ignored Dr. Owens' report or the community. We are working to make what we believe are some beneficial changes to the community and we will continue that process.

Councilman Newman explained that Council's basic role is to set policies. The Greenlife and Staples projects didn't come before Council for approval and thus, our options were limited.

Ms. Heather Rayburn explained how they tried to work with Staples, however, they had to act within a timeframe. She felt a citizen should not have to file a lawsuit to get the laws enforced. When a city makes a mistake, they should take responsibility and then uphold the principle of accountability. She asked Council issue the notice of violation to Staples if they won't do anything. Let's enforce what we have.

In response to Councilman Mumpower, City Attorney Oast's opinion was that the window of opportunity to issue a notice of violation has closed.

Councilman Davis felt that the Mayor's conversation with Staples may get us to a better place. He wondered if the amortization of the sign might be a good idea. He hoped this will bring us some closure.

E. LAWSUIT

The City received a faxed Complaint on August 22, 2007, which is generally described as follows: Asheville Sports Properties, LLC, vs. City of Asheville. The nature of the proceeding is a complaint for damage to real property caused by a defective storm water drainage system. This matter will be handled by an attorney outside the City Attorney's Office.

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Rev. Christopher Chiaronmonte encouraged Council to expedite the downtown bathrooms.

Ms. Kyle Ross spoke about the need for trust between the Asheville Police Department and the public.

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 10:17 p.m.

Kenisha Lupe
CITY CLERK

Terry M. Bellamy
MAYOR

Tuesday – September 11, 2007 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn (participating via speaker phone - excused from the meeting at 10:05 p.m.); Councilman R. Carl Mumpower (excused from the meeting at 10:05 p.m.); Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Keisha Lipe

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Newman gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING SEPTEMBER, 2007, AS "ALCOHOL & DRUG ADDICTION RECOVERY MONTH"

Mayor Bellamy read the proclamation proclaiming September, 2007, as "Alcohol & Drug Addiction Recovery Month" in the City of Asheville. She presented the proclamation to Mr. Tom Britton who briefed City Council on some activities taking place during the month.

B. PROCLAMATION PROCLAIMING SEPTEMBER 24-28, 2007, AS "MINORITY ENTERPRISE DEVELOPMENT WEEK"

Councilman Davis read the proclamation proclaiming September 24-28, 2007, as "Minority Enterprise Development Week" in the City of Asheville. He presented the proclamation to Minority Business Program Coordinator Brenda Mills and Russ Yelton, Director – Asheville-Buncombe Technical Community College's Small Business Center/Business Incubator who briefed City Council on some activities taking place during the week.

C. PROCLAMATION PROCLAIMING SEPTEMBER, 2007, AS "SAFE A LIFE MONTH"

Vice-Mayor Jones read the proclamation proclaiming September, 2007, as "Save a Life Month" in the City of Asheville. She presented the proclamation to Fire Chief Greg Grayson who briefed City Council on some activities taking place during the month. At Mayor Bellamy's request, Chief Grayson explained improvements in their facilities and training of their employees.

II. CONSENT AGENDA:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON AUGUST 28, 2007, AS AMENDED

Mayor Bellamy provided City Clerk Lipe with a couple of minor typographical errors and asked that the minutes be amended.

B. ORDINANCE NO. 3532 - BUDGET AMENDMENT FROM THE N.C. GOVERNOR'S HIGHWAY SAFETY PROGRAM TO FUND THE PURCHASE OF CRASH INVESTIGATION EQUIPMENT

Summary: The consideration of a budget amendment in the amount of $5,000 from the North Carolina Governor's Highway Safety Program to fund the purchase of crash investigation equipment.

The Asheville Police Department currently participates in highway safety activities sponsored by the North Carolina Governor's Highway Safety Program. As a result, the Asheville Police Department was selected to receive $5,000 in highway safety funding to assist them with their highway safety initiatives and motor vehicle crash investigation. This $5,000 would be in addition to the $10,000 that the department received for the 2006-07 grant budget year.

This action conforms to the City Council's Strategic Operating Plan under Partnerships to Improve Critical Services and Infrastructure. Goal 2, Objective A: Research and develop strategies for securing significant new recurring revenue sources.

Pro:

- Reimbursement revenue to cover the cost of obtaining a Crash Data Retrieval system to assist investigators with serious crash investigations.

Cons:

- The city will have to send officers to training in order for them to be able to use the equipment proficiently.
- The city will have to bear the cost of maintaining the equipment.
- City staff recommends City Council approve a budget amendment in the amount of $5,000 from the North Carolina Governor's Highway Safety Program (NC GHSP) so that crash investigation equipment may be purchased.

ORDINANCE BOOK NO. 24 - PAGE 198

C. 1. RESOLUTION NO. 07-166 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT GRANT FUNDS FROM THE N.C. OFFICE OF JUSTICE PROGRAMS TO MAKE TECHNOLOGICAL IMPROVEMENTS IN THE AREA OF POLICE RADIOS FOR THE ASHEVILLE POLICE DEPARTMENT

Summary: The consideration of a resolution authorizing the City Manager to accept grant funds under the N.C. Office of Justice Programs of the Department of Justice (JAG) and the associated budget amendment in the amount of $53,641.00.

The City of Asheville has been awarded a grant from the JAG in the amount of $53,641 which is to be shared with Buncombe County Sheriff's Department. The Asheville Police Department (APD) and the Buncombe County Sheriff's Department have signed a Memorandum of Understanding recognizing APD as the grant funds administering agency. There is no local match and the City of Asheville's portion of the grant is $37,945. The purpose of the grant program is to make technological improvements in the area of police radios for the Asheville Police Department. This will allow for the purchase of 9 XTS 3000 Motorola portable radios and 33 replacement batteries.

Pros:

- Will allow APD to provide necessary equipment, digital portable radios for patrol officers.
- Will allow officers to connect via radio communications with other agencies through new technology.

Cons:

- The City of Asheville and the Asheville Police Department would be required to maintain the upkeep of the equipment, replacing equipment when needed.
- This action complies with City Council's Strategic Operating Plan: Goal 3: Strong City and County Partnerships. This joint grant allows the City and the County to work together on an improvement initiative.

City staff recommends City Council approve a resolution authorizing the City Manager to accept grant funds under JAG and the associated budget amendment, in the amount of $53,641.00.

RESOLUTION BOOK NO. 30 - PAGE 425

C.2. ORDINANCE NO. 3533 - BUDGET AMENDMENT TO ACCEPT GRANT FUNDS FROM THE N.C. DEPT. OF JUSTICE

Summary: See Consent Agenda "C.1" above.

ORDINANCE BOOK NO. 24 - PAGE 200

D. RESOLUTION NO. 07-167 - RESOLUTION APPOINTING ELIZABETH JONES TO THE CIVIC CENTER COMMISSION

Summary: The consideration of a resolution appointing Elizabeth Jones as a member to the Civic Center Commission.

Brian Turner has resigned as a Civic Center Commission member, thus leaving an unexpired term until June 30, 2008.

On August 21, 2007, City Council instructed the City Clerk to arrange interviews for Elizabeth A. Jones, J. Michael Burke and John West. Mr. Burke was interested in appointment but was unable to attend the interviews on August 28, 2007.

On August 28, 2007, it was the consensus of Council to appoint Elizabeth Jones as a member of the Civic Center Commission to serve the unexpired term of Mr. Turner, term to expire June 30, 2008, or until his successor has been appointed.

RESOLUTION BOOK NO. 30 - PAGE 426

E. RESOLUTION NO. 07-168 - RESOLUTION APPOINTING WILLIAM MADISON TO THE AMERICANS WITH DISABILITIES ACT COMPLIANCE COMMITTEE

Summary: The consideration of a resolution appointing William Madison as a member to the Americans with Disabilities Act Compliance Committee.

The terms of Sherry Fitzpatrick and Mary Robertson (disabled community representatives) expired on August 22, 2007.

On August 21, 2007, City Council instructed the City Clerk to arrange interviews for Walter Randolph and William Madison. The City Clerk was unable to contact Mr. Randolph to arrange an interview time.

On August 28, 2007, it was the consensus of City Council to appoint William Madison (disabled community representative) to serve a three year term, term to expire August 22, 2010, or until his successor has been appointed.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Davis moved for the adoption of the Consent Agenda. This motion was seconded by Vice-Mayor Jones and carried unanimously.

III. PRESENTATIONS & REPORTS:

A. METROPOLITAN SEWERAGE DISTRICT BOARD ANNUAL REPORT

Mr. Steve Aceto, Chairman of the Metropolitan Sewerage District (MSD) Board, introduced Mr. Tom Hartye, General Manager of MSD. Mr. Aceto then explained the different committees each of the Board members serve on, in addition to their attendance to the regular Board meetings. He noted the City representatives (including Mayor Bellamy and Councilman Newman) have attended the Board meetings regularly and their contributions are very much valued.

He explained some of MSD's significant issues: (1) recently completed Facilities Plan for the Sewage Treatment Plant; (2) sewer line rehabilitation; (3) lost industrial customers; and (4) development issues - how they affect the orderly growth of the sewer system.

He then explained their goals: (1) update of their Master Plan for orderly growth of the sewer infrastructure; (2) coordination of the sewer collector system rehab efforts with the City of Asheville Water Department; and (3) reconsider our financial and other incentives for new connections, including the affordable housing incentives.

Mayor Bellamy said that she is proud of the fiduciary responsibility that MSD has shown over their entire organization. In addition, the State has recognized MSD for their work to repair the sewer system, noting that the spillage sewerage numbers are continuously decreasing.

Councilman Newman said that where we put infrastructure has a lot to do with where growth and development occurs. Buncombe County has adopted an updated Land Use Plan that has some regulations to steer growth and development. MSD is talking amongst themselves, as a Board, and with the County about how to best coordinate the County's Land Use Plan with MSD's infrastructure extension policies.

On behalf of City Council, Mayor Bellamy thanked Mr. Aceto and the entire MSD Board for their hard work, and City Council looks forward to their updated Master Plan.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR THE PROJECT KNOWN AS THE ELLINGTON HOTEL, LOCATED ON BILTMORE AVENUE, ASTON STREET AND SOUTH LEXINGTON AVENUE TO INCLUDE 125 HOTEL ROOMS AND 52 RESIDENTIAL CONDOMINIUMS

City Clerk Lipe administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 5:30 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Alan Glines submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Glines said that this is the consideration of the issuance of a conditional use permit for the project known as The Ellington Hotel, located on Biltmore Avenue, Aston Street and South Lexington Avenue to include 125 hotel rooms and 52 residential condominiums.

The Ellington Hotel project is located on three streets in the downtown central business district. Biltmore Avenue is at the front of the building and provides the main entrance and address for the project (Attachments to City Exhibit 3 - Location Map, Aerial Map). Aston Street and Lexington Avenue are secondary frontage lines and provide access to garage parking and service functions for the project (Attachments to City Exhibit 3 - Footprint of Ground Floor Level, Landscape Plan). The proposal is for a hotel with 125 rooms and a condominium portion that has 52 residential units. The total project square footage including basement level garage spaces is almost 350,000 square feet that reaches twenty-three stories. Measured from Biltmore Avenue the project will total about 305 feet (the main access level) but will be higher as measured from Lexington Avenue due to the natural fall in topography. The main hotel entrance to the development is provided from Biltmore Avenue through a one-way driveway into the lobby area. Hotel guests will then unload and their car will be parked by valet parking services (Attachments to City Exhibit 3 - Series of Footprint Drawings - Ground Floor Level). The entrance driveway continues to become the alley out to Aston Street (Attachments to City Exhibit 3 - Schematics and Architectural Drawings). This drive provides the access to the parking levels at the back of the site and onto Lexington Avenue for basement (below grade) parking levels. Trash pickup and other housekeeping functions for the project are handled internally in the basement and are accessed from Lexington Avenue. Condominium residents will use the Lexington Avenue driveway for access to the basement parking. The project will provide a café space along Biltmore Avenue at the front of the hotel as well as a pedestrian entrance to the building. Along Aston Street there will be a small retail space fronting on the street and areas for art work. This should provide some activity along the street at this location. The artwork concept is also proposed along S. Lexington Avenue to enliven the space as a better alternative to the basic Unified Development Ordinance (UDO) requirements for windows and doors into the garage level and was reviewed by the Downtown Commission.

The design of the building has been described by the architects as neo-deco style which is based on architectural styles of the 1920's (Attachments to City Exhibit 3 - East, South and North Elevations of Building; View from Lexington Avenue). The building is twenty-three stories and steps inward as the building goes up (Attachments to City Exhibit 3 - Breakout of Uses in Building; North/South Profile of Breakout of Uses in Building). The building is tallest as viewed from Lexington Avenue because of the fall of the topography to this side of the site (Attachments to City Exhibit 3 - Elevation Drawings). As measured from Biltmore Avenue to the top of the roof lighting feature, the building is about 305 feet tall. The height to the main roof area (the parapet wall) is about 273 feet as measured from Biltmore Avenue. The building step-backs are greatest along Biltmore Avenue with a major break in the façade at the ninth story. This floor is a main amenity floor for the hotel and will feature a restaurant, health and fitness area and pool. The floors above this point are the condominium floors. Although this proposed building is taller than all the other structures in downtown, it will be closest in height to the BB&T Building on Pack Square. The proposal was reviewed at several meetings with members of the Downtown Commission who considered the proposal for compliance with the guidelines setup for the downtown Central Business District. The UDO does not provide a height limit in the Central Business District. The Downtown Commission noted that downtown is punctuated by taller buildings and varied topography which provides the city with an interesting skyline. The project is considered a landmark structure because of its height

and addition to the skyline of the city if it is approved. The Downtown Commission provided the observation that by providing the series of step-backs along all of the facades (as shown in the elevations), the building is more attractive with a thinner taller profile. The alternative for a shorter but more monolithic façade was felt to be inferior to the present design. Although the vote was not unanimous in favor of the proposal, the Downtown Commission approved the design.

During the review process, the Downtown Commission was asked to approve several modifications to the requirements in the UDO. These items included a greater setback from Biltmore Avenue (to allow a 30' deep courtyard); approving the concept of art space windows (called vatrines) instead of required windows or openings along Lexington Avenue; and wall lengths in excess of 20' without a change in façade (through window or door relief, etc.). Over several meetings the Downtown Commission asked for some additional design features to improve the project and the following was agreed to by the developer: a new retail space along Aston Street; greater design definition for the west façade near the top of the structure; and a pedestrian entrance from Biltmore Avenue into the café space. The Art Program that is part of the alternative for Lexington Avenue ground level windows will be in collaboration with art partners in the community and with the Grove Park Inn (Attachment to City Exhibit 3 - Art Drawings). There was comment and concern from Downtown Commission members regarding the driveway across Biltmore Avenue because this is a major pedestrian street and is identified on the 'Key Pedestrian Streets' map. This project proposes the first driveway along this block. The Technical Review Committee (TRC) has reviewed the issue and although it is not ideal, feels that it can be managed safely with control; specifically requiring all traffic to use the drive as a 'turn-in' only and not allow exits from the driveway. The Downtown Commission approved the design of the building and the requested modifications at their meeting on July 13, 2007.

The project was reviewed by the TRC. This review was a preliminary look at the project so that the general feasibility of the project could be considered. If the project is approved by the Asheville City Council, the project will be reviewed in more detail by the TRC and is called a 'final TRC review.' The comments from TRC members were mostly standard review comments but there were some questions that will be reviewed in more detail following: location of staging for the project; the exit along Aston Street; location of the construction cranes; lane closures and other construction details; sidewalk improvements; and movement of traffic. Construction staging is important to consider so that the construction can be safely accommodated and that the community understands the construction impacts. The developer has negotiated with a property owner along S. Lexington Avenue for staging and parking during construction. The exit along Aston Street will have to operate in a way that does not disrupt the current use of the alley for access to several Biltmore Avenue properties. There was also concern expressed that the existing alley and the proposed driveway will essentially be side by side creating a wide driveway opening across the sidewalk. The construction crane comment concerns the safe operation of the crane to limit crossing the public right of way areas with the overhead crane. Lane closures are a similar concern for downtown construction projects; since construction can last for several years, lane closure requests are reviewed at least conceptually so that impacts can be planned ahead of time. Sidewalk connections also have to be managed throughout the process to minimize disruptions in connectivity. The sidewalk comment for Aston Street and Lexington Avenue concern new proposed sidewalks where staff would like to see that the sidewalks widened to ten feet as is recommended for the Central Business District. The developer noted concern about lack of space along the street and the required loss of on-street parking there. Staff noted that space for the wider sidewalks could come from the property side and not from just the right of way. Opportunities to improve sidewalk infrastructure are rare and come about with major changes like this, a new construction project. A traffic impact study has been completed for the project and has been reviewed by the traffic engineer. Minor changes have been recommended to the plan but the initial study of the results did seem to satisfy most concerns for safety and movement. Staff will continue to work with the developers to work through these remaining issues and they will be resolved at the time of final TRC review of the project.

Staging for the property will occur at 86 South Lexington Avenue (City Exhibit 4 - Map Showing the Staging Areas). The properties are identified as 9648.06-49-2289 and 9648.06-49-2291. The properties currently have one story warehouse buildings on them; the owner is Parcheggio AVL LLC and is leased by Public Interest Projects. The empty warehouse structures will be removed from the site

under a separate permit process. Unlike projects outside the Central Business District, staging for projects may not occur on the same site as the development proposal because in many cases the building occupies the entire site. In these situations, staging must occur on another location. In order to provide this information earlier in the process the property is identified in the materials considered by City Council. The staging area parcels will be cleared of the structures and the site will be rough graded and graveled. Storage of material shipments related to the construction and parking for workers will be provided on the site for the duration of the construction period which may be up to three years. Aside from standard requirements such as proper driveway design and sight triangle requirements, this site will not be improved to meet other UDO requirements for permanent facilities such as sidewalks, paving and parking lot and street landscaping.
The hotel development will provide a shuttle between the Grove Park Inn and the Ellington so that guests at both locations can easily move between the two venues. The benefit to the downtown area is that car trips will be reduced and guests will have easy access to the downtown shops and restaurants.
Employee parking for the Ellington will be provided though a private contract off-site.

The project has created a unique program to channel funds to create affordable housing in the downtown area. The developers of the project are working with the Community Foundation of Western North Carolina to manage the program. The way the program works is that at the initial sale of each condo unit, 1.25 % of the selling price will go to an affordable housing fund created by the Community Foundation. At a point in the future if the hotel is sold, it will generate a similar percent to the fund. After the initial sale for a period until 2080, when any unit or the hotel transfers again, a half of a percent of the selling price will go into the affordable housing fund. The Community Foundation will administer the program as a loan fund and is asked to focus on housing within a half mile of the downtown area. It is expected that the loan funds can be leveraged with other funds to expand the reach of the program.

He summarized the concerns he has heard: care of buildings to the north during the demolition and construction; Biltmore Avenue sidewalk remaining open during construction; loss of revenue during construction; maintenance of access to buildings during construction and access for deliveries; dissemination of information to the neighborhood during the duration of the construction; growth and traffic along Macon Avenue and Charlotte Street resulting from people from the Ellington going to the Grove Park Inn (not using the shuttle); request that shuttle be a condition for approval and allowing the shuttle to be used by not just guests of the Grove Park Inn or the Ellington, but by the general public; height; limitation of parking facilities; limitation of employee parking; and curb cut along Biltmore Avenue.

Section 7-16-2(c) of the UDO states that the Asheville City Council shall not approve the conditional use permit and site plan unless it make the following findings , based on evidence and testimony received at the public hearing or appearing in the record of the case. Staff has evaluated the seven findings save for additional evidence that may be presented during the public hearing for the project.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**

   The plan has been reviewed by the TRC and has been found to be compliant with safety requirements per the review of the conceptual master plan. If the project is approved the plans will be submitted for final TRC and for building permits and meet building safety requirements, traffic review standards and fire safety requirements.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**

   This site is an infill location on one of the oldest streets in Asheville. The most unique feature of the site is that there are three street frontages which must be addressed through the design. The project follows the grade of the site with the most prominent façade along Biltmore Avenue and

site service and housekeeping functions happening along Lexington Avenue and Aston Street. The proposed project will maintain streetscapes along Biltmore Avenue aside from the new driveway cut. Along Lexington Avenue and Aston Street the streetscape should be better defined through this project.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**

The proposal represents a major investment in the downtown area and recognizes that downtown is a major asset in the community. The project should be a major destination that will add to the value of adjoining properties and the street as a whole. The proposal will bring hotel guests into the heart of the City as well as new residents. The project is expected to provide a boost to the downtown community which will not injure the value of adjoining property.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**

Downtown Asheville is the part of the city with the greatest diversity with regard to style and heights of buildings. Structures in the immediate vicinity of the Ellington proposal are between two and three stories tall. The BB&T Building is closest in height to the Ellington and is a short distance to Pack Square. The light feature at the top of the Ellington will be about 300 feet above Biltmore Avenue. The main section of the building will be about 273 feet. The height of the BB&T Building at the main parapet is between 210 and 220 feet (excluding the mechanical penthouse). The parcel for the Ellington sits below the location of the BB&T Building by 26 feet. The topography assists in reducing the overall scale of the Ellington. The Downtown Design guidelines recognize the variety in heights in downtown and recommend architectural elements at the lower levels to reduce the scale of taller buildings. The Ellington has a series of step backs on each façade that moderates the height and provides interest to the building. The Downtown Commission reviewed and approved the design at their July 13, 2007, meeting. The project was recognized as a landmark building proposal. Biltmore Avenue is identified on the Key Pedestrian Streets map. The curb cut along Biltmore Avenue is the only driveway on this block. Concern has been expressed that the driveway is out of character with this aspect of the neighborhood. Except for this issue, the project appears to be in harmony, scale bulk, coverage, density and character of the downtown area.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**

The comprehensive plan recognizes downtown Asheville as an opportunity for development and investment. Special emphasis is given to infill locations in the Center City Plan where density is appropriate and where the infrastructure and context support the development. The smart growth policies support density infill development. City adopted plans have supported the reinvestment in the downtown area as a way to ensure the growth, sustainability, and vitality of the community.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**

The project has been reviewed by the TRC and no items of concern were noted from this development. The project is appropriately located with respect to transportation and other infrastructure.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**

The traffic impact study has been submitted for this development. The City Traffic Engineer provided comments to revise a few areas of the report. In general the items are minor in nature.

Based on the number of driveways designed for this project (three), there will be unavoidable conflict with pedestrians in the area of this project. The main issue of concern expressed by the public has been the driveway cut along Biltmore Avenue which is noted as a key pedestrian street in the comprehensive plan and in the UDO. Although driveways are not forbidden on these streets they should be limited or other alternatives considered. The design of the driveways for the project will have to meet technical safety standards so as to avoid traffic congestion or create a traffic hazard.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

This Level III project was recommended for approval by a 7-0 vote by the Planning and Zoning Commission. About 12 people spoke at the Planning & Zoning Commission meeting - most were not opposed to the development.

Pros:

- The proposal will be one of the largest investments in the downtown area
- The downtown area is appropriate for high density mixed-use projects
- The proposal reinforces the downtown as the center of the community and region
- The proposal is likely to be a tourist draw all its own like the Grove Park Inn is today

Cons:

- The project will be seen from many vantage points across the city (a potential plus)
- The proposal brings the main traffic entrance across the sidewalk on Biltmore Avenue
- Construction projects create impacts on neighbors that can be difficult to mitigate during the course of the construction
- If sidewalk modification is approved, project will result in sub-standard sidewalk widths.

The Planning and Zoning Commission voted to recommend approval of the Ellington Hotel by a vote of 7-0 during the August 1, 2007, meeting. In addition, they recommended the developer provide an ombudsman person to manage community comments, manage the schedule for nearby neighbors, and also provide an interface for people affected by the development during the construction phase of the project. Staff concurs with that recommendation.

Mr. Mike Webster, representing the Beck Group, spoke in support of the Ellington. He said this is a great location and they have great sponsorship with very experienced team members. This development offers unique things, both social and community benefits, e.g., workforce housing, arts program, sustainable design, and positive economic impact.

Mr. Gary Kerner, President of 3 Architecture and principle designer for the project, (Applicant Exhibit 1) explained how important the architectural design is for the Ellington. In detail, he explained the neo-deco style of the building, along with the floor and conceptual plans of the Ellington, noting that all parking is below grade. He explained how a boutique hotel is all about arrival and experience. The way people arrive is a key to the success of the property itself. Regarding height, the developer surveyed the finished floor elevation of their building and the finished floor elevation of the BB&T Building - to the top of the BB&T penthouse to the top of the Ellington penthouse, is a 38.10 foot difference.

Mr. Tom Abbott, Chief Financial Officer at the Grove Park Inn, spoke about the estimated 10-year economic impact that the project will produce from a hotel standpoint. He also explained how the hotel will operate in comparison to the Grove Park Inn. It is their intention to find a shuttle that utilizes compressed natural gas. He reiterated Mr. Glines comments regarding workforce housing, noting that one of their obligations is to place the workforce housing within one-half mile of the Central Business District.

Mr. Webster spoke about the Arts Program in which they have been working with the Asheville Art Museum. The objectives include: to enhance the street experience, to further build the Asheville reputation as an arts community, link to local arts, and support local artists - all funded by the Ellington.

Mr. Webster said that even though there is no current LEED certification process for hotels, the Ellington will follow the US Green Building Council's suggestions and recommendations for new construction. Regarding sustainability, the project will: (1) comply with the Green Plan for Hotels - N.C. Division of Pollution Prevention and Environmental Assistance (waste reduction, recycling, energy and water conservation); (2) follow the US Green Building Council standards for new construction; and (3) participate in NC Green Power. He noted that they are proposing to address the 35 sustainable design items outlined in the City's staff report.

Mr. Webster said that regarding the traffic analysis, he said that (1) there is no adverse affect on study area; (2) acceptable levels of service expected at nearby intersections; (3) no right turn tapers or physical improvements necessary; (4) minor timing changes at traffic signals; and (5) left turn off Biltmore should not impact intersection at Aston Street.

Finally, Mr. Webster addressed the UDO conditional standards as follows: (1) no danger to public health or safety (TRC review); (2) compatible with site features (site re-use); (3) will not injure value of adjacent property (a boost); (4) in harmony with scale, density of downtown (setbacks, massing); (5) confirm with Smart Growth Policy (density infill); (6) location supported by Central Business District infrastructure (utilities); and (7) no undue traffic congestion or hazard. He urged Council to support the conditional use permit for this project.

The following individuals spoke in opposition of the conditional use permit for the Ellington for several reasons and concerns, some being, but are not limited to: project benefits only the elite and gated community segments; parking mayhem; building will not contribute anything to help the uniqueness of Asheville; building will tower over everything around it since most of the area buildings are three stories high; construction will impede traffic on Biltmore Avenue; construction will result in loss of revenue for local businesses; project is good, but not for Asheville; as the project will have a significant traffic impact on the Grove Park/Sunset Mountain neighborhood because the Ellington guests will have the opportunity to enjoy the full Grove Park Inn's amenities, the shuttle should be a condition of the conditional use permit; building qualifies as a sky-scraper; egress into the building will cause cars to stack up on Biltmore Avenue; pedestrian safety across driveway cut on Biltmore Avenue; does the Fire Department have training to rescue people from a sky-scraper; building is a vertical gated community; stress of the buildings in the neighborhood; traffic study is narrow in scope - it should include development projects already underway in the Central Business District and the Grove Park neighborhoods; the height issue should be determined first and then consider the development; what happens if the Grove Park Inn and the Ellington ties are severed; three years of construction mayhem - debris, dust, noise and heavy equipment in downtown Asheville; what happens if the developer takes more time to complete the project; small businesses will be taxed off Biltmore Avenue; the scale of the building should be consistent with what we have today; the developer should be required to have a shadow analysis; Asheville already has a good variety of buildings and this building will not weave into the fabric of our City; there are other ways to be creative to get affordable housing dollars; Asheville is already an arts destination; small businesses may not survive during the construction phase; how often will the shuttle run and how much will the shuttle deter traffic in the Grove Park/Sunset Mountain neighborhood; developer lacks green building knowledge; density and infill is too much; need for a short-term moratorium on all downtown projects until a Downtown Master Plan is in place; need for affordable housing downtown; jobs are extremely low end and way below living wage jobs; there is nothing affordable at all in the development; and this development increases the split of wealthy class and the servers:

Mr. Jesse Junior
Ms. Arwen deLyon
Mr. Fred English, Asheville resident
Mr. Tim Peck
Ms. Grace Curry, Grove Park/Sunset Mountain Neighborhood Association President

Mr. Bob Malkin, representing Asheville Citizen Voices (Neighborhood Exhibit 4)
Mr. Jake Quinn, resident on Sunset Drive
Ms. Elaine Lite
A resident on Macon Avenue
Ms. Julie Brant, member of the Asheville Downtown Commission
Owner of Cold River Gallery
A resident of Asheville
Rev. Christopher Chiaronmonte

The following individuals spoke in support of the conditional use permit for the Ellington for several reasons, some being, but are not limited to: small shops in downtown rely on people to come downtown to buy goods; the dollars generated from this project can be constructively used to build affordable housing, build infrastructure and build the kinds of transportation programs we want to see; if we want to save our mountains and countryside we need to encourage dense downtown development; this is a well-defined, aesthetically stimulating infill project on this side of downtown; project follows the Five-Year Vision Plan developed by AdvantageWest Economic Development Group; estimated job creation and additions to tax base are impressive; honoring the late architect Douglas Ellington and establishing the Community Housing Fund demonstrates the civic leadership and creativity of the Grove Park Inn; project will bring people downtown year-round; the building is original, independent and attractive, with multi-purposes; downtown density is good for all of downtown; link to the Grove Park Inn is beneficial; development makes a significant investment in the Art Program, has a housing component and green commitments - all of which are not required by the UDO; the Grove Park Inn has been a part of this community for 100 years and has been associated with three major landmark projects in this area; this is a tall infill development which does not displace a single business in downtown Asheville; if we can't build tall buildings in downtown Asheville, where can we build them; this will make our downtown businesses richer and stronger; supports the downtown as a center of arts and culture in this region; provides tax revenue necessary for the City and County to achieve it's goals; provides 100 good middle class and lower-middle class jobs; it supports affordable housing within one-half mile of the downtown; development will contribute to the walk ability of downtown; and the building is smart:

Mr. Chuck Tessier
Mr. John Rogers, Architect
Mr. Dale Carroll, President and CEO of AdvantageWest Economic Development Group (Neighborhood Exhibit 2)
Ms. Tracy Adler, owner of Café on the Square
Ms. Pam Myers, Executive Director of the Asheville Art Museum
Mr. Fred Martin, Vice-President of the Mast General Store (noted concerns below)
Mr. Dwight Buckner, President of the Asheville Downtown Association
Mr. Pat Whalen, Chairman of the Asheville Downtown Commission
A downtown business owner
Mr. David Craig Starkey, Director of the Asheville Lyric Opera

Ms. Charlotte Goedsche, President of the Elisha Mitchell Audubon Society, explained how Asheville is a location for thousands of migrating forest songbirds and it's estimated between 100 Million and 1 Billion birds die from collisions with buildings in the United States each year. First, most songbirds migrate at night and they can be disoriented by lights on high-rises. She suggested the lighting at the top of the building be turned off by 11:00 p.m. during migration which in our area the spring migration takes place throughout April and May, while the fall migration extends from August to the end of October. Secondly, window glass is another significant cause of bird collisions. She suggested patterns be etched into the glass on the west and east sides of the penthouse or the application of a commercially available film to the glass (Neighborhood Exhibit 1).

Ms. Tracy Gualano, representing the Junior League of Asheville, stated they were neither for nor against the Ellington project. She presented Council with a list of concerns regarding their property at 29 Biltmore Avenue (Neighborhood Exhibit 3). They had several structural concerns - possible damage to their property during demolition and/or construction; monetary concerns - huge loss in customers (store

revenue) during demolition and construction; parking/access concerns; operational concerns; safety concerns of their employees, volunteers and customers; and general questions (1) how long will each stage of construction be and can they have access to a written timeline; (2) with how much frequency will neighboring property owners be communicated with regarding construction schedules and engineering reports; and (3) will there be someone on site making sure surrounding structures are not compromised.

Mr. Fred Martin, Vice-President and one of the principal owners of the Mast General Store, said that they do support the development. However, he has two concerns: (1) access to their store by patrons or for their deliveries even after build-out; and (2) parking. He felt the City should focus some of the generated revenues towards additional public and private parking, noting that the Mast Store will be losing 25 of their current staff parking places with the build-out. He offered to make the Mast General Store available in the processes of this project in the form of an advisory committee member or a part of a regularly scheduled business update group.

After rebuttal, Mayor Bellamy closed the public hearing at 8:11 p.m.

In response to Councilman Mumpower, City Traffic Engineer Ken Putnam explained the methodology and accepted practice used in traffic studies, along with how they established the actual study area. In summary, Biltmore Avenue carries 12,000 vehicles a day. This project would only add approximately 10% more traffic on the road system. In the afternoon peak, which was the highest peak (between 5-6 p.m.), traffic volumes are 1,000 an hour and this project will add about 100 vehicles. Around Park Square and I-240, most traffic will be coming straight down Biltmore Avenue and turn right into the building.

When Councilman Mumpower asked about the height of the building, Mr. Kemer said that the building is a significant building. However, his professional view as an architect is that the neighborhood is the entire Central Business District. The Ellington has a striking difference between the buildings adjacent to it, but its relationship is the Central Business District itself.

Upon inquiry of Councilman Newman, Mr. Webster said that based on the tax records, the BB&T Building is 188,000 square feet. Mr. Webster said that even though the Ellington is almost twice the square footage as the BB&T building, a large portion of that square footage is below street level and at the base of the building.

Councilman Newman questioned the green building aspects of the development. Mr. Webster said that they are proposing to address 35 sustainable design items (all LEED items) outlined in the City's staff report, however, the LEED certification is not a condition of the conditional use permit. He said that his firm has over 80 LEED professionals and pointed out that LEED certification is a nice standard, but those sustainable design items can be achieved without the actual certification (which requires you to go through a subjective review). The 35 items are the minimum but there are opportunities to do more. He said they would be willing to have the 35 sustainable design items be a condition of the conditional use permit as it would be a more predictable process.

After Mr. Webster responded to Councilman Newman regarding their participation in the NC Green Power program, Councilman Newman stated that he would be interested in hearing more details on that in the future.

In response to Councilman Newman, Mr. Glines said that the City has control over the land closures and they are reviewed as a TRC item, with input from the City's Traffic Engineer, Building Safety Department and Fire Department.

In response to Councilman Newman, Mr. Webster said that if you are a residential owner, you can use the valet service. However, the way the building is set up, they have separate elevator banks that serve different levels of the buildings. Elevator banks in the condo section go directly to the garage. All that traffic enters and exits off Lexington Avenue. We do have ample valet space in the building, not

only by stacking the number of cars in the entryway, but we also have a holding area on that same level for a number of cars.

When Councilman Newman asked for more details on the shuttle service, Mr. Abbot said that they plan for continuous service 16 hours a day with two compressed natural gas vehicles, and they would not be averse to adding that as a condition of the conditional use permit.

When Councilman Newman asked if they had considered the concerns of the Elisha Mitchell Audubon Society, Mr. Webster said that they had not, but they would be willing to consider the light management aspect.

In response to Councilwoman Cape, Mr. Glines explained that there is not a sidewalk modification required for Lexington Avenue anymore; however, a sidewalk modification is needed on Aston Street (City Exhibit 5). He explained they want to keep on-street parking on Aston Street but the sidewalk will be approximately 7-8 feet (not the required 10 feet).

Councilwoman Cape was very concerned about the driveway cut on Biltmore Avenue and disagreed with the methodology behind creating the numbers for the traffic analysis. She felt the left turn onto Biltmore Avenue will cause traffic congestion. She suggested a pedestrian amenity facing Biltmore Avenue and an entrance on Aston Street for traffic. She could not support the project because of the driveway cut on Biltmore Avenue, in addition to no parking for the 100 employees. The developers have created a private seating area (not a pocket park) along with a driveway in the middle of one of our most vibrant parts of town.

The developer's traffic consultant with Mattern and Craig reiterated the trip generation methodology, noting that the developer is willing to do away with the left turn movement all together. He explained that from a traffic perspective, it's better if you can disburse the traffic.

In response to Councilman Davis, Mr. Webster said that they are happy to work with the Mast General Store, the Junior League of Asheville and other nearby property owners. He assured Council that the rear or front accesses to the businesses will not be disruptive. There may be an instance where they may bring in a big load of material and an exit or entrance may be blocked for a nominal period of time, but they will work closely with the City to plan those. They would be willing to add that as a condition of the conditional use permit.

When Councilman Davis asked about a performance bond to make sure that the buildings will not be structurally damaged, Mr. Webster said that they have hired a structural engineer that has worked with the Junior League of Asheville's structural engineer. The developer thinks they can manage the construction of the building and the demolition of the building next to theirs without harm to the Junior League building. There are ways to protect and support walls. It is very important for them to maintain safety for the general welfare but also for cost and they do have a lot of experience doing that.

In response to Mayor Bellamy regarding elevation, Mr. Kerner said the high point is on Biltmore Avenue. As it slopes back along Aston Street to Lexington Street you have the parking level which is below grade. Starting on grade on Biltmore Avenue, it is 23 stories of varied floor heights, with our smallest floor heights being the guest rooms of 9 feet, 9 inches; the condominiums are 11 foot, 6 inches; and the penthouse is 13 feet. You would see 23 stories from Biltmore Avenue and 24 stories from Lexington Avenue.

In response to Mayor Bellamy, Mr. Kerner said that their balconies are 100% on their property.

Mayor Bellamy recommended the following conditions be made as part of the conditional use permit: (1) that the developer work with the neighborhood regarding staging of the construction with adequate signage; (2) the 35 sustainable design items be achieved as proposed by the developer; (3) the Arts Program as proposed by the developer; (4) the Affordable Housing Program with the Community Foundation of Western North Carolina as proposed by the developer; (5) use of Lexington Street to

deliver building materials in order to keep as much construction traffic off Biltmore Avenue; (6) a detailed stormwater plan in place at the TRC level; (7) a website to keep the neighbors informed of the project as it progresses - and perhaps list street closings; (8) shuttle service be limited to 8:00 a.m. - Midnight with no PA after 10:00 p.m.; (9) the developer provide an ombudsman person to manage community comments, manage the schedule for nearby neighbors, and also provide an interface for people affected by the development during the construction phase of the project; and (10) everything else the developer included in his package.

In response to Mayor Bellamy about the developer willing to give up the left-turn in on Biltmore Avenue, Mr. Webster said they would like to have it but it's not critical. Based on the traffic analysis it appeared to be a non-issue, so we would like to have it, but we would accept a condition of not having it. She suggested a condition of a left-turn restriction be applied during the weekdays only (not applicable on the weekends) and at specific times. Mr. Webster said that would be okay, but the practical enforcement of that would be challenging. He would, however, be willing to that condition.

In response to Mayor Bellamy, Mr. Webster said that construction time will be 24 months.

When Mayor Bellamy asked how many parking spaces would be lost, Mr. Bob Kuykendall with the Beck Group, said that we will lose 2-3 parking spaces on Biltmore Avenue, one on Aston Street and one on Lexington Street (Applicant Exhibit 2).

Mayor Bellamy stressed the need to deal with the location of the construction cranes and staging be addressed up front so the developer and the community know what is expected. Mr. Glines said that it would be easy to add a condition not using Biltmore Avenue for the staging for this project He explained how the developer has space to place the cranes inside their property. The TRC will review that kind of specific information to limit closings.

Mayor Bellamy felt that as the conditions are listed, the ombudsman will have less calls because the developer and the community know the expectations.

Mayor Bellamy asked who would pay for any timing changes to the traffic signals. The developer's traffic engineer said that any improvements to the traffic infrastructure would be incurred by the developer. Any minor timing plans that would need to be developed would be developed by a professional engineer and the developer would incur that cost. That information would then be turned over to the N.C. Dept. of Transportation for their installation.

In response to Mayor Bellamy regarding underground utilities, Mr. Webster said they are well aware of poles on the Lexington Street side (he's not sure about the other streets), but those will go underground. He was not opposed to that being a condition.

In response to Mayor Bellamy regarding migrating birds, Mr. Webster said that he would be willing to work on a plan of either dimming or cutting off the lights at 11:00 p.m. However, they would not be willing to etch a pattern into the glass on the west and east sides of the penthouse or apply a commercially available film to the glass.

In response to Mayor Bellamy, City Traffic Engineer Putnam said that Lexington Avenue is currently two-way traffic. Mayor Bellamy would be amenable to one-waying Lexington Avenue at certain times during construction or limit access, as that has been done successfully with the development of 12 S. Lexington.

When Mayor Bellamy asked if the holiday parade and the Bele Chere festival will be a concern when Biltmore Avenue is blocked off, President and CEO of the Grove Park Inn Craig Madison said that would not be a problem as they will still have access on Lexington Avenue and Aston Street.

Mayor Bellamy asked how the Civic Center was built beside the Basilica without damaging the church. She wondered how large structures are built without destroying the older, smaller buildings. City

Manager Jackson felt sure that City Engineer Cathy Ball would tell Council that construction in that area would require extensive geotechnical and monitoring throughout the entire construction process.

Mayor Bellamy said the performance bond question still needs to be explored.

In response to the fire apparatus, Mr. Kuykendall said that they have reviewed with the Fire Department the building and our fire access. They said that the area along Aston Street does give them ample access for the ladder truck. It will be a fully sprinklered building and will be built in accordance with all the high rise codes for fire protection. City Attorney Oast also noted that fire access is an issue addressed at the TRC.

Councilman Freeborn was concerned of approving a project of this magnitude without having the Downtown Master Plan in place.

In response to Vice-Mayor Jones regarding LEED certification, Mr. Webster said that the actual certification adds a lot of cost to the project and it's also subjective. The money is spent in advance and you don't know whether you will get the certification. He will be just as proud of the building advertising the fact that they have a sustainable building, without the LEED certification.

Vice-Mayor Jones said that the City has adopted a policy for our buildings to move toward a goal of a certification standard. Perhaps not doing a certification would be okay for this development, but have the height of your aspirations meet the point level on the goals of LEED.

City Attorney Oast said that a new law has been passed state-wide that allows cities to allow for waivers or reductions in building permit fees if buildings are LEED certified.

Vice-Mayor Jones spoke about the City's Housing Trust Fund and she hoped the Community Foundation of Western North Carolina would be open to talk with our community development group about the different facets of affordable housing. Mr. Bob Wagner, representing the Community Foundation of Western North Carolina, said that he has spoken with Community Development Director Charlotte Caplan. They are in the process of looking at best practices and are getting together an advisory group of experts on the issue. They have worked with other developers who are putting some money into a fund for community needs and that is working quite well.

In response to Vice-Mayor Jones, Mr. Steve McManus, from McManus Development, explained in detail the affordable housing program, noting that this will be a revolving loan.

Mayor Bellamy asked if the developer would reduce the height of their building by 36 feet. Mr Kerner presented Council with an option of taking two stories off the top of the building, resulting in a loss of 23 feet. He showed Council a sketch (Applicant Exhibit 3) which keeps the same integrity of the design. The only other thing they have in height is the 20-foot lighted piece on the very top of the building itself, which he feels is an important piece. Once you start making the building smaller, squatting becomes a component that begins to let the building go in another direction.

Councilman Davis moved to adopt a conditional use permit for the project known as The Ellington Hotel (with the loss of two stories totaling 23 feet), located on Biltmore Avenue, Aston Street and South Lexington Avenue to include 125 hotel rooms and 52 residential condominiums, and find that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation, subject to the conditions recommended by City staff and the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (3) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; (4) This project will undergo final review by the TRC prior to issuance of any required permits; (5) Approval of the sidewalk modification on Aston Street; (6) Rear or front accesses to the businesses not be disruptive (work with the

City to plan any instances where they may bring in a big load of material and an exit or entrance may be blocked for a nominal period of time); (7) that the developer work with the neighborhood regarding staging of the construction with adequate signage; (8) the 35 sustainable design items be achieved as proposed by the developer; (9) the Arts Program as proposed by the developer; (10) the Affordable Housing Program with the Community Foundation of Western North Carolina as proposed by the developer; (11) use of Lexington Street to deliver building materials in order to keep as much construction traffic off Biltmore Avenue; (12) a detailed stormwater plan in place at the TRC level; (13) a website to keep the neighbors informed of the project as it progresses - and perhaps list street closings; (14) shuttle service be limited to 8:00 a.m. - Midnight with no PA after 10:00 p.m.; (15) the developer provide an ombudsman person to manage community comments, manage the schedule for nearby neighbors, and also provide an interface for people affected by the development during the construction phase of the project; (16) everything else the developer included in his package; (17) left-turn restriction be applied during the weekdays only (not applicable on the weekends) and at specific times; (18) Biltmore Avenue not used for the staging for this project; (19) any utilities (specifically mentioned were the poles on the Lexington Street) be placed underground; and (20) a plan of either dimming or cutting off the lights at 11:00 p.m. for migrating birds.

Councilman Mumpower was concerned with the quick decision by the developer to cut off 23 feet, we may risk losing something. He seconded the motion with the understanding that we don't modify the architectural plan and that no left hand turns be permitted into the project from Biltmore Avenue.

Councilman Davis withdrew his original motion. He then moved to adopt a conditional use permit for the project known as The Ellington Hotel (project will total about 305 feet - from the main access level), located on Biltmore Avenue, Aston Street and South Lexington Avenue to include 125 hotel rooms and 52 residential condominiums, and find that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation, subject to the conditions recommended by City staff and the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (3) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; (4) This project will undergo final review by the TRC prior to issuance of any required permits; (5) Approval of the sidewalk modification on Aston Street; (6) Rear or front accesses to the businesses not be disruptive (work with the City to plan any instances where they may bring in a big load of material and an exit or entrance may be blocked for a nominal period of time); (7) that the developer work with the neighborhood regarding staging of the construction with adequate signage; (8) the 35 sustainable design items be achieved as proposed by the developer; (9) the Arts Program as proposed by the developer; (10) the Affordable Housing Program with the Community Foundation of Western North Carolina as proposed by the developer; (11) use of Lexington Street to deliver building materials in order to keep as much construction traffic off Biltmore Avenue; (12) a detailed stormwater plan in place at the TRC level; (13) a website to keep the neighbors informed of the project as it progresses - and perhaps list street closings; (14) shuttle service be limited to 8:00 a.m. - Midnight with no PA after 10:00 p.m.; (15) the developer provide an ombudsman person to manage community comments, manage the schedule for nearby neighbors, and also provide an interface for people affected by the development during the construction phase of the project; (16) everything else the developer included in his package; (17) no left hand turns be permitted into the project from Biltmore Avenue; (18) Biltmore Avenue not used for the staging for this project; (19) any utilities (specifically mentioned were the poles on the Lexington Street) be placed underground; and (20) a plan of either dimming or cutting off the lights at 11:00 p.m. for migrating birds.

Councilman Newman felt this is fundamentally a good design and has a lot of good green building elements. However, he is concerned about the scale of the building and how it fits into the skyline.

Councilman Mumpower personally believed that (1) Asheville does better to grow tall than grow fat; (2) Atlanta's problem is sprawl and we are not duplicating Atlanta; and (3) this is an extraordinary step into the 21st century and like any extraordinary step it's a little bold and scary.

Councilman Davis felt to hold the BB&T building as the hallmark of our skyline is misplaced.

There was a brief discussion initiated by Councilwoman Cape about postponing this action in order to give the developer an opportunity to review the scale and massing.

In order to give the developer an opportunity to discuss a possible continuance, at 9:54 p.m., Mayor Bellamy announced a 5-minute break.

Mr. W. Louis Bissette Jr., attorney representing the developers, said that if the project is voted down now, it's over. They would be open to tabling the matter for a couple of weeks if you can give them some guidance. They can't cut the project in half as it won't economically work. They don't want to make it another squatty BB&T Building. They are willing to be as reasonable as they possibly can and work for two weeks to see what they can do to get support for the project. He understood Councilman Newman's concern about scale and mass.

Mayor Bellamy suggested the building be reduced by 36 feet; however, she was happy with a 23-foot reduction, along with all the other conditions.

Councilwoman Cape was not supportive of the driveway cut on Biltmore Avenue. She wished they could offer a design with access on Aston Street. There are things she cares about on this project but if the developer works with people, she will try to compromise.

Vice-Mayor Jones would appreciate the developer look at reducing the scale of the building, but she does understand the complexities of that. And, she suggested the developer be clearer on the LEED points, not necessarily the certification.

With that guidance, Mr. Bissette requested Council table the issue until October 16, 2007 (as recommended by the Mayor due to prior agenda commitments). Therefore, Councilman Mumpower moved to table this matter until October 16, 2007. This motion was seconded by Councilman Davis and carried unanimously.

City Attorney Oast said that because this is a quasi-judicial action, Council is still not allowed to talk to the public or developers regarding this matter between now and the meeting on October 16, 2007. He stressed that no one has committed to any of the conditions until the final vote is taken.

Mayor Bellamy said that technically the developer has gone through all the steps as far as TRC, the Planning & Zoning Commission, and the Downtown Commission. However, with the conditional use process City Council can disavow all that and make their own conditions. Council does have the right to be able to ask for tweaks, changes, etc. to the project.

At this time (10:05 p.m.), Councilwoman Cape moved to excuse Councilman Mumpower and Councilman Freeborn from the meeting. This motion was seconded by Councilman Newman and carried unanimously.

B. PUBLIC HEARING TO CONSIDER A RESOLUTION TO PERMANENTLY CLOSE AN UNOPENED PORTION OF TRADE STREET

RESOLUTION NO. 07-169 - RESOLUTION TO PERMANENTLY CLOSE AN UNOPENED PORTION OF TRADE STREET

Mayor Bellamy opened the public hearing at 10:06 p.m.

Assistant Public Works Director Richard Grant said that this is the consideration of a resolution to permanently close an unopened portion of Trade Street. This public hearing was advertised on August 12, 19, 26 and September 7, 2007.

N. C. Gen. Stat. sec. 160-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, Phillip C. Price, on behalf of the adjoining property owners, has requested the City of Asheville permanently close an unopened portion of Trade Street.

Public Works Department staff has researched and contacted all agencies and determined easements are required for The Metropolitan Sewage District and the City of Asheville Water Department.

Pro: The closure allows the property to be used to its maximum potential by adjacent property owners.

Con: The Engineering Department is opposed to the closing of Trade Street for the following reasons: (1) The Trade Street right-of-way is important for long term transportation connectivity; and (2) A future road would provide some relief of traffic congestion at the intersection of Hendersonville Road and Long Shoals Road/Miller Road by providing access to Long Shoals Road via Trade Street and Lance Lane.

City staff recommends against adoption of the resolution to permanently close.

Ms. Patsy Brison, attorney representing a number of property owners, explained how this street has been in existence since 1887 and not used. All adjoining property owners signed the petition to close except for one, and that person is dead and the property is being foreclosed upon due to nonpayment of taxes. There are at least 11 property owners and this portion is essentially their back yards. She showed pictures of the current property on this portion of Trade Street. She said the property owners on both sides have been maintaining the area for years and they want to continue to do that. She said there are two roads that parallel Trade Street that are state maintained and the City doesn't need any other connectivity. She felt the best use of the land is the current use, which is grass with grown trees. They have no problem about reserving the easements.

Mr. Robert Ponder, member of Skyland Baptist Church, said that they have been maintaining this property and it's a separation between houses and their property. They have constructed a park that runs adjacent to this portion of Trade Street. If the street were opened, it would be a danger to our children.

Mayor Bellamy closed the public hearing at 10:16 p.m.

When Councilwoman Cape asked if the Greenway Commission has reviewed this closing as has been requested in the past for road closings, Mr. Grant said that he did not receive a reply from the Parks & Recreation Department.

Mayor Bellamy said that members of Council have previously received a copy of the resolution and it would not be read.

Vice-Mayor Jones moved for the adoption of Resolution No. 07-169_. This motion was seconded by Councilman Davis and carried on a 4-1 vote, with Councilwoman Cape voting "no."

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V. UNFINISHED BUSINESS:

A. UPDATE ON RECOMMENDATION FOR A TEXT AMENDMENT REGULATING THE DISPLAY OF THE AMERICAN FLAG

Intern Planning & Development Director Shannon Tuch said that in response to some enforcement action regarding the use of flags as signage, staff was asked to prepare some information

regarding the City's sign code along with some possible options that could be considered to help clarify when or how American flags would be exempt from sign restrictions.

This information was presented at the Council's July 10, 2007, meeting where it was reviewed. At that time City Council suggested that staff share the same report and recommendations with the Mayor's Task Force on Veterans Affairs to garner additional feedback and possibly explore other options.

On August 28, 2007, staff met with the Task Force where the matter was discussed in some detail and, ultimately, the Task Force members unanimously voted to support staff's recommendation to amend the sign code to clarify that in order for an American flag to be exempt from sign regulations that it must be flown in accordance with the federal standards and guidelines set forth in Title 4, Chapter 1 of the United States Code.

The Task Force also recommended the addition of some definitions to help clarify and staff felt this was very appropriate.

If adopted, this amendment would establish clear standards (federal standards) by which questionable situations could be evaluated.

Lastly, although not part of the recommendation, the Task Force did also support the staff's efforts to educate and not penalize those who may not be following the federal standards in the hopes that a new awareness would inspire new practices.

Staff is seeking direction from Council as to whether this amendment should be brought before the Planning & Zoning Commission for consideration.

Vice-Mayor Jones moved that the Planning & Zoning Commission review this amendment. This motion was seconded by Councilwoman Cape and carried unanimously.

VI. NEW BUSINESS:

VII. OTHER BUSINESS:

Claims

The following claims were received by the City of Asheville during the period of August 10 - 30, 2007: Frances Summers (Parks & Recreation), Sherron Love (Parks & Recreation), Enterprise Leasing (Water), Charter Communications (Water), Daniel Thomas (Sanitation), Deborah Hellman (Sanitation), Mary Rasmussen (Fire), Walter Pittman (Police) and Danise Hauser (Water). These claims have been referred to Asheville Claims Corporation for investigation.

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Rev. Christopher Chiaronmonte spoke about the eroding of civil rights and liberty. In response, Mayor Bellamy read into the record Section 33 of City Council's Rules and Regulations regarding signs in the Council Chamber as follows (noting that this was adopted prior to the seated Council): "Signs, banners, placards and related items shall not be displayed in the city council chamber during city council meetings. Provided, however, that this provision shall not limit the use of such visual aids during a presentation made in the due course of business."

Closed Session

At 10:31 p.m., Councilwoman Cape moved to go into closed session for the following reason: to consider the qualifications, competence, performance, character, fitness, conditions of appointment of an individual public officer or employee. The statutory authorization is contained in G.S. 143-318.11 (a) (3); and to prevent the disclosure of information that is confidential pursuant to G.S. 160A-168, the Personnel

Privacy Act. The statutory authorization is contained in G.S. 143-318.11 (a) (2). This motion was seconded by Councilman Davis and carried unanimously.

At 11:20 p.m., Councilman Davis moved to come out of closed session. This motion was seconded by Councilman Newman and carried unanimously.

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 11:20 p.m.

Brenda Lyle
CITY CLERK

Jerry M Bellamy
MAYOR

Tuesday – September 18, 2007 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Keisha Lipe

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Mayor Bellamy gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING SEPTEMBER 15-29, 2007, AS "FALL LITTER SWEEP"

Councilman Freeborn read the proclamation proclaiming September 15-29, 2007, as "Fall Litter Sweep" in the City of Asheville. He presented the proclamation to Buncombe County Maintenance Engineer Chad Bandy who briefed City Council on some activities taking place during the event.

B. PROCLAMATION PROCLAIMING SEPTEMBER 24, 2007, AS "FAMILY DAY - A DAY TO EAT DINNER WITH YOUR CHILDREN"

Councilman Mumpower read the proclamation proclaiming September 24, 2007, as "Family Day - A Day to Eat Dinner with your Children" in the City of Asheville. He presented the proclamation to Parks & Recreation Director Roderick Simmons.

II. CONSENT AGENDA:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON SEPTEMBER 11, 2007

B. RESOLUTION NO. 07-170- RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT WITH CHARTER COMMUNICATIONS FOR FIBER OPTIC CONSTRUCTION TO LINK THE BUNCOMBE COUNTY AND THE CITY OF ASHEVILLE JOINT PUBLIC SAFETY ACCESS POINT

Summary: The consideration of a resolution authorizing the City Manager to sign a contract with Charter Communications for fiber optic construction to link the Buncombe County and City of Asheville Joint Public Safety Access Point (PSAP) and associated budget amendment in the amount of $171,235.

Significant communications capabilities are required in order to successfully move the Public Safety Access Point to the Erwin Hills location. Requirements include high capacity radio equipment; GIS; and Computer Aided Dispatch capabilities. Fiber optic has been selected by

County and City staff as the primary means of communication because of its reliability and capacity.

Buncombe County is responsible for procuring infrastructure for the PSAP project; however, the City can procure this fiber construction at a considerable discount from market pricing (approximately a third of market price) due to existing contractual arrangements between the City and Charter Communications. Therefore, it is in citizens' best interest for the City to be the purchasing agency for this construction, and for Buncombe County to reimburse the City.

Pros:

- Most stable and capacious way to handle public safety sensitive communication
- No net impact on the budget after reimbursement
- Less expensive due to contractual arrangements than equivalent microwave communications without weather impact issues

Con:

- Fiber optic can be accidentally cut by heavy equipment such as backhoes, and service restoration can take many hours. (Thus, a backup means of communication is also being planned by the County).

Staff recommends City Council approve a resolution authorizing the City Manager to sign a contract with Charter Communications for fiber optic construction to link the Buncombe County and City of Asheville Joint Public Safety Access Point (PSAP) and associated budget amendment in the amount of $171,235.

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C. ORDINANCE NO. 3534- BUDGET AMENDMENT FOR FIBER OPTIC CONSTRUCTION TO LINK THE BUNCOMBE COUNTY AND CITY OF ASHEVILLE JOINT PUBLIC SAFETY ACCESS POINT

Summary: See Consent Agenda "B" above.

ORDINANCE BOOK NO. 24 - PAGE 202

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Vice-Mayor Jones moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Newman and carried unanimously.

III. PRESENTATIONS & REPORTS:

A. NOISE ORDINANCE APPEALS BOARD ANNUAL REPORT

Due to illness, Mr. James Fink, Chairman of the Noise Ordinance Appeals Board, was unable to attend the meeting.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO CREATE A MIXED USE DEVELOPMENT DISTRICT

Mayor Bellamy said that this public hearing and the following two public hearings to (1) consider an amendment to the Unified Development Ordinance to provide for development

standards for parking garages and (2) consider rezoning properties located on or near Merrimon Avenue were related. The public hearings were held on August 14, 2007, and postponed until this date. All would need to be voted on separately.

City Manager Jackson said that on August 14, 2007, planning staff presented the results of a lengthy study that examined options for guiding appropriate and desirable development along major corridors in the City of Asheville with a specific focus on Merrimon Avenue.

Since these items originally appeared on City Council's agenda on August 14, 2007, city staff has conducted additional research on the proposed zoning and possible exclusions for specific areas along the corridor. Staff has also completed some preliminary research on form based codes and their future applicability.

While conducting this additional analysis, staff has recently learned of new and unanticipated concerns from the affected business owners. Additionally, we have learned of interest on the part of the coalition of business owners and neighborhood groups to continue dialogue about the issues.

In light of these developments combined with an interest in investigating utility and form based code options, it is staff's recommendation that City Council withdraw these items for 90-120 days. The additional time will allow staff to develop a communication plan, solicit community input and conduct informational meetings in an effort to ensure the most inclusive process.

The postponement of these items will not affect the consideration of individual applications along the corridor.

Councilman Freeborn said that he recently attended a meeting with the Merrimon Avenue business owners and now feels confident that the process utilized to get to this point is flawed. There was frustration and disappointment exhibited from the business owners and the neighbors. Many property owners were not even aware of their current zoning. He felt that the City has enough resources available (website, TV channel, newspaper, e-News, etc.) to educate the public. He felt we needed to do a better job as an organization to educate the public so we are not continuing to divide the groups, but to form a better product.

The following individuals spoke for a continuance of the public hearings (most requesting the matters be remanded back to the Planning & Zoning Commission) for various reasons, some being, but are not limited to: business owners and property owners basically agree that they want Merrimon Avenue more pedestrian friendly, greener, wider sidewalks with all utilities buried; Merrimon Avenue should not have cookie-cutter architecture; current Planning Director was not involved from the beginning of the project; business owners do not like zero setback; business owners do not agree with placing all the buildings close to Merrimon Avenue; election season takes away concentration on issues; Mixed Use District is down-zoning many properties; City needs to improve their communication efforts to property owners; need for ordinance education;

Mr. Chris Peterson, representing the Merrimon Avenue business owners group
Mr. Albert Sneed, representing owners of Deal Buick property on Merrimon Avenue
Rev. Christopher Chiaronmonte
Mr. Frank Dozier, business owner on Merrimon Avenue
Mr. Foster Shriner, business owner on Merrimon Avenue (presented Council with a petition containing approximately 50 signatures opposing the Mixed Use District for Merrimon Avenue)
Mr. Jim Groce, property owner on Merrimon Avenue
Mr. Carr Swicegood, business owner on Merrimon Avenue
Mr. John Kledis, business owner on Merrimon Avenue
Ms. Cynthia Kovach, business owner on Merrimon Avenue
Mr. Keith Thomson, resident off Merrimon Avenue

Mr. Bill Gatewood, business owner on Merrimon Avenue
Mr. Gus Barlas, business owner on Merrimon Avenue
Mr. Gus Morris, Jr., business owner on Merrimon Avenue

Councilman Davis moved to continue this matter until January 15, 2008. This motion was seconded by Councilman Mumpower.

When Councilman Mumpower questioned a continuance or remanding the matters back to the Planning & Zoning Commission, Councilman Davis didn't want to undermine action of a commission, but in this case, he felt it may be better to defer to staff judgment. He said that the Comparison Table of Existing vs. Proposed Development Requirements for Merrimon Avenue that Interim Planning & Development Director Shannon Tuch prepared is a good attempt at clarifying some of the concerns the business owners expressed. He suggested a smaller group of business owners meet with Planning staff to review the requirements. He felt we may be able to move the matters forward quicker without actually Planning & Zoning Commission involvement.

Mayor Bellamy thanked Councilman Davis and Councilman Freeborn for trying to talk to the business owners to see where they stood. A couple of weeks ago we heard from neighborhood representatives and this week we have the business owners represented. It is her hope that at Council's next meeting we will have both groups represented so we can get to a good partnership.

Councilman Newman said that he has not heard any support of the proposal that new buildings be at least two stories. If that is taken out, he thinks that may relieve some concerns.

In response to Councilwoman Cape about rezoning the Deal Buick property to Urban Village District, Ms. Tuch explained that the project has been reviewed by the Technical Review Committee, with conditions, and is moving forward.

When Councilwoman Cape asked about zoning signs on Merrimon Avenue, Ms. Tuch explained that the signs do go up and down for different public meetings but agreed that when signs are up for so long, people begin to ignore them. If Council approves the continuance, the signs will be removed until closer to the January 15 date. She said that we will post the new signs 10 days prior to the January 15 meeting (which is the statutory requirement). She explained that the sign posting is only one way of advertising. We also advertise in the newspaper and notify the individual property owners and the property owners within 200 feet of the affected property.

Councilwoman Cape suggested we advertise on our cable channel the fact that whenever people see zoning signs that action will be taken on that property in 10 days.

The motion made by Councilman Davis to continue this matter until January 15, 2008, and seconded by Councilman Mumpower carried unanimously.

B. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO ESTABLISH DEVELOPMENT STANDARDS FOR PARKING GARAGES

This public hearing was held in conjunction with Public Hearing A and C.

Councilman Davis moved to continue this matter until January 15, 2008. This motion was seconded by Councilman Mumpower and carried unanimously.

C. PUBLIC HEARING TO CONSIDER THE REZONING PROPERTIES LOCATED ON OR NEAR MERRIMON AVENUE FROM COMMUNITY BUSINESS I DISTRICT, COMMUNITY BUSINESS II DISTRICT, COMMUNITY BUSINESS I

DISTRICT/CONDITIONAL ZONING, COMMUNITY BUSINESS II DISTRICT/CONDITIONAL ZONING, NEIGHBORHOOD CORRIDOR DISTRICT/CONDITIONAL ZONING AND HIGHWAY BUSINESS DISTRICT/CONDITIONAL ZONING TO MIXED USE DISTRICT

This public hearing was held in conjunction with Public Hearing A and B.

Councilman Davis moved to continue this matter until January 15, 2008. This motion was seconded by Councilman Mumpower and carried unanimously.

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. REVIEW FINANCIAL MANAGEMENT OF PARKS & RECREATION

ORDINANCE NO. 3535 - BUDGET AMENDMENT TO PROVIDE A BUSINESS MANAGER POSITION

Chief Financial Officer Ben Durant reviewed the report on Parks and Recreation's capital project management practices with key findings and recommendations.

The City Manager's Office engaged the Finance Department to review Parks & Recreation's capital project management practices and as a result produced a written report of findings and recommendations. The overall objective of the report was determine what improvements, if any, should be made to Parks & Recreation's capital project management practices in order to strengthen the department's overall effectiveness.

The general conclusion of the report is that Parks & Recreation's overall systems for managing capital projects need substantial improvement.

A key recommendation in the report is to permanently fund a Business Manager position in order to strengthen Parks & Recreation's overall financial management capacity. A budget amendment to provide eight months worth of funding for the Business Manager position is included with this staff report.

The executive summary of the report is as follows:

"The City Manager's Office engaged the Finance Department to review Parks & Recreation's (P&R) capital project management practices and produce a written report of findings and recommendations. This request was in response to recent budget overruns, funding shortfalls and implementation delays in some key Parks & Recreation capital projects.

Objectives

Specific objectives of this review were to determine:

- If the City's internal controls are adequate or if additional measures should be implemented;
- If Parks capital project expenditures were properly authorized;
- What improvements, if any, can Parks & Recreation make to its capital project management practices based on best practices research.

Scope and Methodology

The scope of this study is focused on how P&R manages its projects *after* the decision has been made to pursue a particular capital investment. This study does not provide an evaluation of how Parks & Recreation plans for and prioritizes its projects *before* approval. Three projects (i.e. Richmond Hill Park, Memorial Stadium, and Azalea Park) were selected to provide a basis for evaluation. The study methodology included reviews of project budget reports, as well as interviews with five staff members in Parks & Recreation involved directly or indirectly in capital projects management.

Section 1 of this report provides profiles of the Richmond Hill, Memorial Stadium and the Azalea Park projects. Section 2 presents key findings & recommendations of the review, followed by a departmental response to the recommendations.

General Findings and Conclusions

General findings and conclusions area listed below. Specific findings are delineated in the report.

- P&R has operated independently of established budget policies and procedures in the management of some capital projects;
- P&R's overall systems for managing capital projects needs improvement;
- The management and tracking of revenues that support a capital project tends to get less focus than other aspects of capital projects management, creating deficits in some projects.

This report recommends that P&R:

- P&R should reduce its reliance on procurement cards and enhance its use of the purchase order system. Further, P&R should attend additional training programs on proper management of procurement card usage.
- P&R should fully account for the costs of each authorized capital project in the correct capital project budget. P&R staff should continuously review and monitor their capital projects, submitting requests for budget adjustments through the proper channels.
- P&R should seek consultation from the Finance Department in reviewing all requests for budget amendments that include private donations as a funding source to ensure that a written agreement or letter of commitment is in place. Budget amendments for private donations submitted to City Council should include an attached written agreement as supporting documentation.
- P&R staff should submit additional project information to City Council regarding Memorial Park as part of the First Quarter Financial Report. The report should discuss options for funding the current "deficit" in this project.
- P&R's practice of maneuvering budget authority derived from grant funds to temporarily cover non-grant related expenses should be discontinued.
- P& R should develop a more effective system for managing capital projects that ensures accountability and promotes solid project tracking, monitoring and reporting.
- Though ultimately the responsibility of the department, more financial oversight of capital projects by the Finance Department is desirable. The Budget Office and the P&R

Business Manager (when hired) should meet regularly to review the financial status of various capital projects."

Parks & Recreation Director Roderick Simmons said that the Finance Department has their full cooperation in complying with the recommendations of the report. They will put some checks and balances in place in order to be prudent with the taxpayer's dollars. They would like to hire a business manager to oversee the Capital Improvement Plan (CIP) and their budget. Before projects are developed, they want to make sure they have a clear funding and operating plan in place. That is one key responsibility for the new position. In the quarterly financial report, they will bring Council the CIP funding plan and outline Memorial Stadium and the Reid Center, e.g., how they will be funded with recommendations and guidance from Council. He asked for Council's approval of the Business Manager position to help them with the recommendations in the report.

Mr. Keith Thomson explained the benefits of the Parks & Recreation After-School programs.

Mayor Bellamy pointed out that Asheville High School's new principal Ms. Carol Ray has been nominated for the Principal of the Year Award and thanked her for taking on this new leadership role.

In response to Councilwoman Cape, Mr. Durant said that other City departments manage their financial practices through a variety of positions. What makes the Parks & Recreation Department unique is that they have a lot of facilities that are revenue producing functions and require more intensive management than other departments. He felt a Business Manager would be appropriate for the Parks & Recreation Department.

City Manager Jackson responded to Councilwoman Cape's concern of housing the building maintenance function in the Parks & Recreation Department.

Councilman Mumpower explained the problem with a clear plan is that many of these projects do not lend themselves to clear plans, using Memorial Stadium as an example. Even with someone not paying for something they committed to, he felt this is a good plan and hoped it will come to life. If we can get the Memorial Stadium project moving, he would personally take on the responsibility of raising $150,000 for the entranceway and felt that once started, other community members will help.

Mayor Bellamy said that there is a growing sense in the community that if the City does the basic city services, there are other community members willing to help ensure the upgrades.

Vice-Mayor Jones felt that we need to be operating on sound business principles other than political aspirations.

Mayor Bellamy said that City staff is not prepared at this time to look at the projects in detail. They will come back to Council to discuss the individual projects. What is before Council now is whether Council supports the results of the review and the request of a Business Manager position in the Parks & Recreation Department.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilman Freeborn moved to approve the budget amendment for the Business Manager position in the Parks & Recreation Department. This motion was seconded by Councilman Newman.

Councilman Davis hoped we can address the individual projects soon and that they can move forward quickly, noting that some fund-raising may be involved, or there may be some re-addressing of priorities.

Chief Financial Officer Durant said that they felt the best time to deal with those issues would be during the quarterly report, since we will have a good picture of how our revenue and expenditures are doing and where we might be able to find additional funding to support additional needs.

There was a brief discussion, initiated by Councilman Mumpower, of who historically handled the finance functions in the Parks & Recreation Department. In summary, Mr. Simmons said that he is looking at the entire Parks & Recreation Department to seek efficiency.

The motion made by Councilman Freeborn to adopt Ordinance No. 3535, and seconded by Councilman Newman, carried unanimously.

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VI. OTHER BUSINESS:

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Stormwater and Erosion Control Ordinance

The following individuals spoke in favor of (1) notifying, in writing, all property owners over the 200 miles of streams that are affected by the stormwater and erosion control ordinance, (2) the composition of the new watershed policy committee include surface water property owners; and (3) staff prepare a short summary of the stormwater and erosion control ordinance and how it will affect property owners:

Ms. Jane Hildebrand, resident in the Chunns Cove area
Mr. Pete Hildebrand, resident in the Chunns Cove area
Mr. Kermit Brown
Ms. Laurie Miller

Ms. Deborah Squire spoke against the stormwater and erosion control ordinance. She urged Council to go to the mismanagement of soil and water construction at the source and not distribute them to the homeowners downstream and penalize them and take their property out of their hands to cure an illness they are not responsible for.

It was the consensus of Council to prepare a communication plan, not just for Planning & Zoning Commission issues, but for issues in the entire organization. City Manager Jackson said that he will bring back to Council an overall plan and seek their direction and feedback as to whether that is an acceptable plan.

Other items

Rev. Christopher Chiaronmonte spoke about the homeless issue in Asheville and how it is the reputation of the Asheville Police Department to move the homeless out of Asheville. He felt that taking five months to install two restrooms near Pritchard Park is too long.

There was a brief discussion, initiated by Councilman Newman, about meeting with our legislators regarding involuntary annexation. Mayor Bellamy said that a meeting date is being arranged and hoped that Council would be open to looking at the larger issue of growth with our area municipalities. She said that City staff will present their analysis of the 1/2 mile vs. the 1 mile annexation and will leave it up to Council on whether to support it or not.

Councilman Mumpower presented the September Asheville-Buncombe County Drug Commission poster.

Closed Session

At 6:54 p.m., Councilman Mumpower moved to go into closed session for the following reason: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: Bellsouth Telecommunications Inc. and the City of Asheville - The statutory authorization is contained in G.S. 143-318.11(a) (3); and (2) To prevent the disclosure of information that is confidential pursuant to N.C. Gen. Stat. sec. 143-318.11 (a) (1) - The statutory authority is contained in G.S. 143-318.11(a)(4). This motion was seconded by Councilman Freeborn and carried unanimously.

Resolution No. 07-171 - Resolution authorizing the settlement of the BellSouth Telecommunications Inc. vs. City of Asheville lawsuit.

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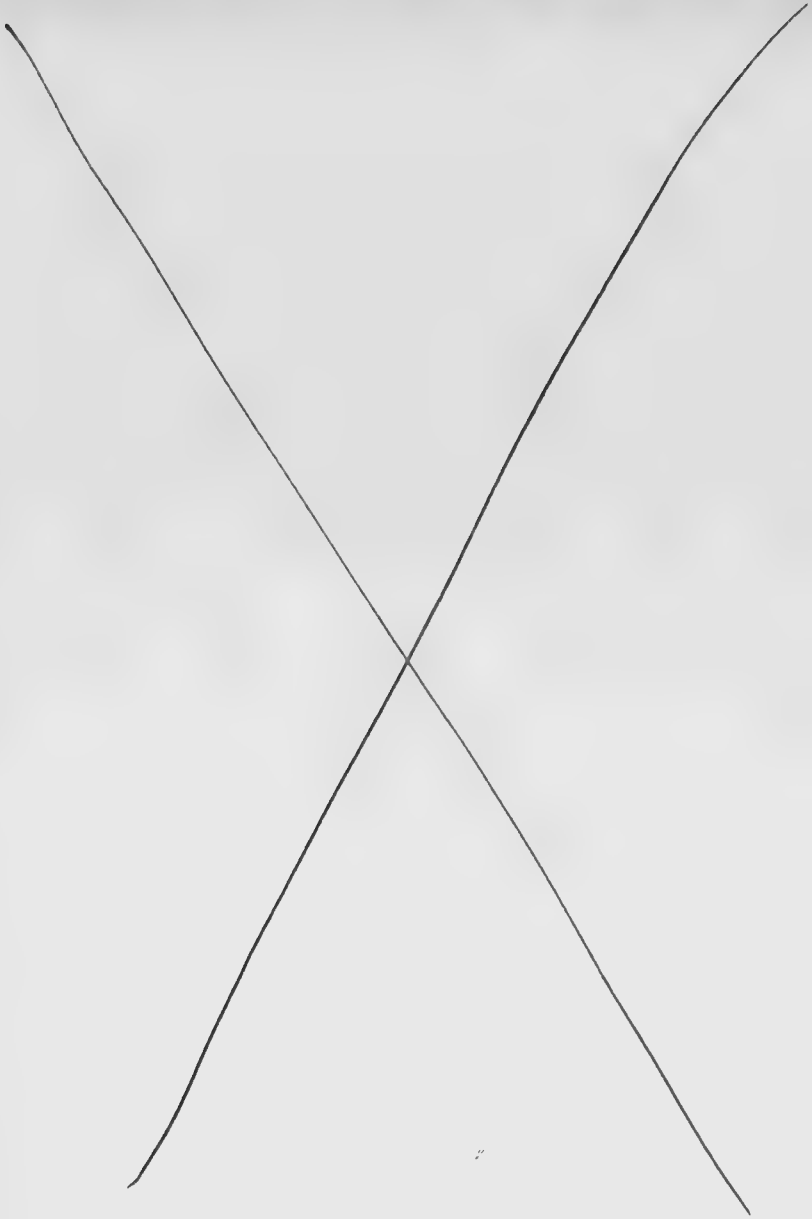
At 7:15 p.m., Councilwoman Cape moved to come out of closed session. This motion was seconded by Councilman Freeborn and carried unanimously.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 7:15 p.m.

Keesha Lipe
CITY CLERK

Terry Bellamy
MAYOR



Tuesday – September 25, 2007 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; Assistant City Manager Jeffrey B. Richardson; City Attorney Robert W. Oast Jr.; and City Clerk Keisha Lipe

Absent: Councilman Jan B. Davis (participated in Public Hearing B via speaker phone)

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Vice-Mayor Jones gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING SEPTEMBER 25, 2007, AS "WILLIAM 'COOKIE' MILLS DAY"

Councilman Mumpower read the proclamation proclaiming September 25, 2007, as "William 'Cookie' Mills Day" in the City of Asheville. He presented the proclamation to Mr. Mills for being a leader in our community in battling drugs.

B. PROCLAMATION PROCLAIMING SEPTEMBER 29, 2007, AS "HONOR AIR DAY"

Mayor Bellamy read the proclamation proclaiming September 29, 2007, as "Honor Air Day" in the City of Asheville. She presented the proclamation to Mr. Bob Haggard and members of the Rotary Club of Asheville, who briefed City Council on some activities taking place during the day.

C. PROCLAMATION PROCLAIMING SEPTEMBER 24-29, 2007, AS "DOLLAR WI$E WEEK - SAVINGS FOR KIDS AND FAMILIES"

Mayor Bellamy read the proclamation proclaiming September 24-29, 2007, as "Dollar Wi$e Week - Savings for Kids and Families" in the City of Asheville. She presented the proclamation to Ms. Celeste Collins and Mr. Brad Blackburn who briefed City Council on some activities taking place during the week.

D. PROCLAMATION PROCLAIMING SEPTEMBER 15 - OCTOBER 15, 2007, AS "HISPANIC HERITAGE MONTH"

Vice-Mayor Jones read the proclamation proclaiming September 15 - October 15, 2007, as "Hispanic Heritage Month" in the City of Asheville. She presented the proclamation to Ms. Althea Gonzalez, Mr. Tyrone Greenlee, Pastor Russell Hilliard, Mr. Isaac Coleman, and Ms. Edna Campos, on behalf of the entire Latino community, who briefed City Council on some activities taking place during the month.

E. PROCLAMATION PROCLAIMING OCTOBER 13, 2007, AS "AIDS AWARENESS DAY"

Councilman Newman read the proclamation proclaiming October 13, 2007, as "AIDS Awareness Day" in the City of Asheville. He presented the proclamation to Ms. Emmaleigh Argonauto, on behalf of the Western North Carolina AIDS Project, who briefed City Council on some activities taking place during the day. Mayor Bellamy thanked Ms. Argonauto for their outreach in the community.

F. PROCLAMATION PROCLAIMING OCTOBER 16, 2007, AS "EMPTY BOWLS LUNCH & WORLD FOOD DAY"

Councilman Freeborn read the proclamation proclaiming October 16, 2007, as "Empty Bowls Lunch & World Food Day" in the City of Asheville. He presented the proclamation to Ms. Kitty Schaller, Executive Director of Manna Food Bank, who briefed City Council on some activities taking place during the day.

G. PROCLAMATION PROCLAIMING OCTOBER, 2007, AS "SISTER CITIES MONTH"

Councilwoman Cape read the proclamation proclaiming October, 2007, as "Sister Cities Month" in the City of Asheville. She presented the proclamation to Mr. Dick Hall, who briefed City Council on some activities taking place during the month.

II. CONSENT AGENDA:

At the request of Councilman Mumpower, Consent Agenda Item "D" was removed from the Consent Agenda for an individual vote.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON SEPTEMBER 18, 2007

B. RESOLUTION NO. 07-172- RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH BUNCOMBE COUNTY FOR THE PROVISION OF PARATRANSIT SERVICES

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with Buncombe County for the provision of paratransit services.

Mountain Mobility is a county operated rural transit system. The system works cooperatively with Asheville Transit to provide fixed route service in Black Mountain and Candler to extend transit accessibility into the county. They also provide public transportation for a large number of non-profit and governmental agencies such as the council on aging, Services for the Blind, and the Buncombe County Health Department. They also provide paratransit services for the Asheville Transit System (ATS). These services are required of any fixed route provider such as the Asheville Transit System by the Americans with Disabilities Act of 1990 (ADA), and more particularly by Federal Transit Administration (FTA) regulations.

Mountain Mobility has provided these services to Asheville Transit since the 1990's when the ADA requirements began to be promulgated. The latest contract with Mountain Mobility was signed in 2002. At the last Triennial review the FTA deemed the contract incomplete because it did not include an enumeration of the federal requirements which pass through to any agency or contractor with whom Asheville Transit spends federal funds. In turn, Mountain Mobility had also produced an updated contract as well.

The new contract sets the method for determining fares (by the mile), commits the county to purchasing, maintaining and operating equipment, providing services to qualify ADA customers and schedule trips according to ADA guidelines, and incorporates all Federal regulations.

Each party may cancel on thirty days notice.

Pros:

- Allows the City to provide required paratransit service without a large capital investment
- Provides a comparable standard of transportation for people with disabilities which will not allow them to ride the bus
- Furthers intergovernmental cooperation to achieve a common goal of increasing mobility for all persons

Con:

- There are no disadvantages to the City of Asheville.

Staff recommends City Council approve a resolution authorizing the City Manager to enter into an agreement with Buncombe County for the provision of paratransit services.

RESOLUTION BOOK 30 - PAGE 431

C. RESOLUTION NO. 07-173 - RESOLUTION FIXING THE DATE OF A PUBLIC HEARING FOR OCTOBER 23, 2007, FOR VOLUNTARY ANNEXATION OF PROPERTY LOCATED AT 420 AIRPORT ROAD

Summary: The consideration of a resolution fixing the date of a public hearing on October 23, 2007, for voluntary annexation of property located at 420 Airport Road.

Airport Road, LLC, has petitioned the City of Asheville for the annexation of one lot located at 420 Airport Road in South Buncombe County containing a total of approximately 1.97 acres. The area is not contiguous to the primary corporate limits of the City and therefore is subject to the standards for annexation of noncontiguous areas contained in NCGS 160A-58.1.

Pursuant to NCGS 160A-58.2, such petitions must be investigated by the City Clerk for sufficiency in accordance with state law. This investigation has been completed and the Certificate of Sufficiency accompanies this petition request.

The next step in this process is for City Council to fix the date for the public hearing on this matter. Should City Council decide to proceed with this request, the effective date for the annexation would be October 31st of 2007.

Pro:

- Provides for the orderly growth of the City and the tax base through the acceptance of appropriate areas into the corporate limits where owners desire annexation.

Con:

- Marginal increase in service costs (too small to measure or respond to).

This action complies with the 2025 Plan in that it supports the strategy of promoting voluntary annexation of developing areas and meeting the goal of continued use of the urban development tool of annexation in providing for the orderly growth of the City.

Staff recommends City Council approve a resolution fixing the date of a public hearing on October 23, 2007, for voluntary annexation of property located at 420 Airport Road.

RESOLUTION BOOK NO. 30 - PAGE 432

D. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH PLANTE & MORGAN, PLLC, FOR PROFESSIONAL SERVICES FOR THE PROJECT KNOWN AS REPLACEMENT/UPGRADE OF CITY-WIDE INFORMATION SYSTEMS

This item was removed from the Consent Agenda for an individual vote.

E. RESOLUTION NO. 07-175 - RESOLUTION MODIFYING THE 2007 CITY COUNCIL MEETING SCHEDULE TO CANCEL THE OCTOBER 9, 2007, FORMAL MEETING AND THE OCTOBER 30, 2007, COMMUNITY MEETING

RESOLUTION BOOK NO. 30 - PAGE 434

F. RESOLUTION NO. 07-176 - RESOLUTION APPROVING AGREEMENT FOR APPOINTMENT OF CO-TRUSTEE FOR THE ESTATE OF JACK RUSHER

Summary: The consideration of a resolution approving agreement for appointment of co-trustee for the estate of Jake Rusher.

As Council is aware, the City was a beneficiary of the estate of Jake Rusher, the former owner and operator of the Pines club and swimming pool, now the site of Jake Rusher Park. The City has already received substantially all that it was due under Mr. Rusher's will, primarily as a result of the sale of Mr. Rusher's Rutherford County property, which was completed last year.

Mr. Rusher also had created a trust, which was funded partially with assets from his estate. The primary purpose of the trust was to be a vehicle for the distribution of assets remaining in Mr. Rusher's estate, after all specific bequests (including the City) had been satisfied.

Mr. Rusher's will provide for the appointment of Merrill Lynch to serve as a corporate co-trustee for the trust, along with Mr. Rusher's nephew. Merrill Lynch has declined this appointment, and the nephew (also the executor of the will) has been carrying out the terms of the trust. However, there was one duty – administration of a scholarship fund – that was expressly delegated to a corporate co-trustee. In this circumstance, under N.C. law, appointment of the corporate co-trustee may be done by petitioning the Clerk of Court, or by agreement of the beneficiaries of the estate. In order to avoid the delay and expense of petitioning the Clerk of Court to appoint the corporate trustee, Mr. Rusher's nephew seeks the City's consent to the appointment of BB&T as the substitute corporate trustee, and the purpose of this resolution is to authorize the City Manager to sign the agreement.

Pros:
- Will allow more expeditious closing out of estate
- Will avoid the inconvenience of a court proceeding

Con:
- None noted

Adoption of the resolution is recommended.

RESOLUTION BOOK NO. 30 - PAGE 435

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Freeborn moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Cape and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

D. RESOLUTION NO. 07-174- RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH PLANTE & MORGAN, PLLC, FOR PROFESSIONAL SERVICES FOR THE PROJECT KNOWN AS REPLACEMENT/UPGRADE OF CITY-WIDE INFORMATION SYSTEMS

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract in the amount of $95,000 with Plante & Morgan, PLLC for professional services for the project known as replacement/upgrade of city-wide information systems.

In light of significant system inefficiencies staff requested, and Council has approved, budgetary appropriations totaling $1.3 million for Fiscal Year 2008 to replace the current system (HTE).

Historically, the City of Asheville engages in a City-wide Information Systems effort of this scale once every 6-10 years. The elicitation of requirements for an HTE replacement will involve in-depth communication with, and engagement of, staff from every City department. Current business processes will be reviewed, documented, and analyzed. Plante & Moran, PLLC will be contracted to facilitate and conduct this process, perform the business process analysis, develop and issue the software solution RFP, and make expert recommendations regarding appropriate software solution vendors. Due to the infrequency of City-wide Information Systems replacement efforts, these tasks fall outside the range of the City staff's core competencies.

The selection efforts for this consultant included the development of a professional services needs document/RFQ; considerable circulation of this documents both locally and nationally; and a consultant evaluation process where business process and technical expertise were both evaluated.

Pros:
- Efficient use of existing resources to allow staff to continue to focus on areas of "in-house" expertise and core competency.
- Utilization of appropriate expertise to steer $1.3M investment
- Investment in selection of appropriate long-term, strategic software solutions.
- Opportunity for refinement of existing business processes.

Con:
- Risks include the potential for consultant to lack full understanding of our particular organization with regard to business process analysis. A lack of full understanding could lead to a poor outcome. Risks can be minimized through professional project management, proactive staff outreach, and good communication strategies.

Staff recommends City Council approve a resolution authorizing the City Manager to enter into a contract in the amount of $95,000 with Plante & Morgan, PLLC for professional services for the project known as replacement/upgrade of city-wide information systems.

Councilman Mumpower was concerned with the amount of money being invested into this project.

Councilman Newman moved for the adoption of Resolution No. 07-174. This motion was seconded by Councilman Freeborn and carried on a 6-1 vote, with Councilman Mumpower voting "no."

III. PRESENTATIONS & REPORTS:

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER A REQUEST TO REVIEW A PROPOSED MASTER SIGN PLAN PACKAGE FOR PROJECTS IDENTIFIED AS INGLE'S MARKETS LOCATED 1865 HENDERSONVILLE ROAD AND 85 TUNNEL ROAD, RESPECTIVELY

ORDINANCE NO. 3536 - ORDINANCE APPROVING A PROPOSED MASTER SIGN PLAN PACKAGE FOR THE PROJECT IDENTIFIED AS INGLE'S MARKET LOCATED AT 1865 HENDERSONVILLE ROAD

ORDINANCE NO. 3537 - ORDINANCE APPROVING A PROPOSED MASTER SIGN PLAN PACKAGE FOR THE PROJECT IDENTIFIED AS INGLE'S MARKET LOCATED AT 85 TUNNEL ROAD

Mayor Bellamy opened the public hearing at 5:46 p.m.

Interim Planning & Development Director Shannon Tuch said that this is the consideration of a signage plan for two separate Ingles developments located at 1865 Hendersonville Road and 85 Tunnel Road respectively. This public hearing was advertised on September 14 and 21, 2007.

Earlier this year, City Council adopted an ordinance that allows larger developments an opportunity to propose a "signage plan" that would address on-site signage in a comprehensive fashion. This is the second of such applications and is substantially different in content and context than the previous submittal completed for the Biltmore Park Town Center development.

The applicant pursued several variances at the Board of Adjustment to allow the proposed signage plan for the 1865 Hendersonville Road. On July 23, 2007, the Board reviewed the requests and denied the variances (3-2) failing to find any physical hardships to support the additional sign allowances. The applicant is now pursuing an application for a signage plan to seek relief from the City's sign code standards.

The subject signage plans for the two sites are substantially similar with relatively minor differences that will be detailed below. The plans cover the signage for up to three separate structures housing up to four separate services. Separate attached signage is requested for each separate service and includes:

- Multiple signs for the principal Ingles supermarket
- Attached signage for a convenience store (The i Market)
- Attached signage for the retail gasoline sales (Gas Express)
- Attached signage for the car wash (Laser Wash)

Along with this attached signage, Ingles is also requesting consideration of two separate free-standing pylon signs to be located out along the street front for both the retail gasoline sales as well as the Ingles supermarket; both pylon signs are requesting a changeable copy panel.

Both properties are zoned Highway Business (HB) and are considered single tenant sites due, in part, to a recent subdivision that separates the automobile related services (retail gas, convenience store, car wash) component from the larger supermarket property. As separate single tenants, each tenant is permitted up to 125 square feet of attached signage that could be separated into two separate signs for a cumulative total not to exceed 125 square feet. In addition, a separate free-standing sign is permitted for a total of, again, 125 square feet with a height not to exceed 25 feet.

To better understand the signage requested at the two separate sites, as well as what would be allowed under the existing sign code the following summary has been created.

1865 Hendersonville Road (Skyland Ingles)

INGLES MARKET	PROPOSED	WHAT IS ALLOWED	AMOUNT EXCEEDED
Ingles	256.6 s.f.	1sign @ 125 s.f. (may be split into 2 signs max.)	131.6 s.f.
American Owned	42.0 s.f.	Not allowed unless part of above	42.0 s.f.
Fresh Foods	36.6 s.f.	Not allowed unless part of above	36.6 s.f.
Starbuck's	16.0 s.f.	Not allowed unless part of above	16.0 s.f.
Café	**8.0 s.f.	Not allowed unless not visible from the R.O.W.	8.0 s.f.
Video	**8.5 s.f.	Not allowed unless not visible from the R.O.W.	8.5 s.f.
Pharmacy Drive-Thru	*34.8 s.f.	Wayfinding/directional	allowed
Free-standing Pylon	178 s.f.	1 sign @ 125 s.f.	53.0 s.f.
GAS CENTER			
Gas Express, canopy	36.7 s.f.	1sign @ 125 s.f. (may be split into 2 signs max.)	# of signs have been exceeded (4 instead of 2); s.f. is within allowance
Ingles, canopy	24.0 s.f.	Not allowed unless part of above	"
The i Market	15.0 s.f.	Not allowed unless part of above	"
Wash Express	33.0 s.f.	Not allowed unless part of above	"
Laser Wash	15.0 s.f.	Not allowed unless part of above	" cumulative s.f. exceeded by 13.0 s.f.
Free-standing Pylon	144.0 s.f.	1 sign @ 125 s.f.	19.0 s.f.

The proposed plan for the grocery store exceeds the number of attached signs allowed by proposing six separate signs in lieu of the one to two normally allowed. The attached signage also exceeds the total allowed square footage (367.7 s.f. instead of 125 s.f.). In addition, the proposed free-standing sign also exceeds the total square footage allowed (178 s.f. instead of 125 s.f.).

As a separate tenant, the gas center is also permitted the same allowance as the Ingles grocery store. The proposed plan exceeds the total number of attached signs allowed by proposing five separate signs in lieu of the two normally allowed. The attached signage also exceeds the maximum square footage allowed (138 s.f. instead of 125 s.f.). The proposed free-standing sign also exceeds the total square footage allowed (144 s.f. instead of 125 s.f.).

** The Pharmacy Drive-Thru sign was not included in the total square footage since it is considered wayfinding or directional signage. ** There is also a precedent for exempting the Café & Video signs when reduced in size so as not to be visible from the public right-of-way or adjacent properties; the proposed Café and Video signs included in this sign package are two times larger than what is currently installed at the Skyland Ingles.*

85 Tunnel Rd. (Tunnel Road Ingles)

INGLES MARKET	PROPOSED	WHAT IS ALLOWED	AMOUNT EXCEEDED
Ingles	256.6 s.f.	1sign @ 125 s.f. (may be split into 2 signs max.)	131.6 s.f.
American Owned	42.0 s.f.	Not allowed unless part of above	42.0 s.f.
Fresh Foods	36.6 s.f.	Not allowed unless part of above	36.6 s.f.
Café	**8.0 s.f.	Not allowed unless not visible from the R.O.W.	8.0 s.f.
Video	**8.5 s.f.	Not allowed unless not visible from the R.O.W.	8.5 s.f.
Pharmacy Drive-Thru	*34.8 s.f.	Wayfinding/directional	allowed
Free-standing Pylon	178 s.f.	1 sign @ 125 s.f.	53.0 s.f.
GAS CENTER			
Gas Express, canopy	36.7 s.f.	1sign @ 125 s.f. (may be split into 2 signs max.)	# of signs have been exceeded (4 instead of 2); s.f. is within allowance
Ingles, canopy	24.0 s.f.	Not allowed unless part of above	"
Gas Express, kiosk	15.0 s.f.	Not allowed unless part of above	# of signs have been exceeded (3 instead of 2); cumulative s.f. not exceeded
Free-standing Pylon	144.0 s.f.	1 sign @ 125 s.f.	19.0 s.f.

As with the previous site, both the grocery store and gas center are regarded as separate tenants and are allowed the same single tenant allowances. The three proposed signs for the grocery store exceeds the number of signs allowed (5 instead of 2) and also exceeds the total square footage (351.7 s.f. instead of 125 s.f.). The gas center exceeds the total number of signs allowed (3 instead of 2) but does not exceed the total square footage allowance. Lastly, as with the previous site, the free-standing pylon sign exceeds the total allowed (144 s.f. instead of 125 s.f.)

The stated purpose of allowing the consideration of a separate signage plan is as follows: *The purpose behind this section is to permit creativity in sign design and placement to address site issues and constraints associated with topography, pedestrian-orientation, way-finding and other conditions unique to the subject development.*

In the context of the significant number of applications for signs received daily by the City, it is difficult to recognize the creativity in the proposed signage plan where it appears to fail in addressing both pedestrian orientation and way-finding. The sites also appear to be absent of any unique conditions or constraints that would warrant special consideration. The proposed

signage plan is relatively ubiquitous in design, content, and context for the average Ingles in Asheville and surrounding areas and does not appear to meet the intent of the sign code standards.

The applicant has submitted information describing a changing trend in supermarket design and function. Certainly, stores have increased in size however; their distance from the street remains relatively constant with the growth for both the buildings and the parking fields generally occurring lengthwise. Additionally, changes and advancements in building design could be used to help mitigate the effect of the increase in size without the need to fill the voids with additional signage.

Additionally, the applicant's statement describes the need for signage to support several separate "businesses" at each location. However, it is staff's position that there are only two separate businesses (gas center & supermarket) that offers a number of different good and services. The proposed markets do provide a wide variety of products (organic, traditional, ethnic foods) and services (café, delicatessen, bakery, video, etc.) however, this appears to be the trend in large grocery retailers and is well understood without excessive signage. Furthermore, the Starbucks stand located within the store cannot be regarded as a separate tenant since it is not a stand-alone Starbuck's café but is rather, a hybrid franchise that is owned and operated by Ingles Markets; this is not a Starbuck's café but rather an Ingles café that holds a contract to sell and advertise Starbuck's coffee. Additionally, it is common knowledge that a retail gasoline center may provide other services but in addition to that common knowledge, the structures themselves are readily recognizable and reveal the services they provide without the need for signage.

Lastly, it should be noted that a certain amount of signage is allowed by right and how to make use of that signage is entirely within the applicant's discretion. The statement that our current sign code fails to address changing trends in box retail may have some merit but, should be addressed through an amendment to those sign code standards and not through a special, site specific application that does not appear to meet the stated purpose of either the existing sign code standards or the recently adopted signage plan amendment.

Pro:

- Provides clear and recognizable signage to a large grocery retailer.

Cons:

- Exceeds existing standards without creatively addressing pedestrian-orientation or wayfinding; contributes to visual clutter along the corridors.
- May set a non-conforming precedent for other stores in Asheville.

Staff recommends that the signage plan for the Ingles developments located at 1865 Hendersonville Road and 85 Tunnel Road be denied as submitted. Applicant may revise proposed signage to comply with existing standards or revise application to more creatively address recognition, ped-orientation, and/or wayfinding.

Should Council wish to consider the plan, staff requests approving some, but not all, components of the request, or condition the request to better comply with the intent of the sign code standards.

Mr. John Caputo, representing Ingles Markets, explained in detail their need for the sign package they propose. He explained the importance of the "American Owned" signage to Ingles and their dilemma with the Starbucks signage. Starbucks will pull their franchise if the signage is not placed on the building. He noted that the entire Ingles building is 348 linear feet and if that were a strip mall, each 25 linear feet could have a sign, resulting in 15 signs on that same linear footage. He felt that the City's signage guidelines haven't changed over the years because whether you have a 27,000 sq. ft. store or an 80,000 sq. ft. store, you are only allowed the same signage. He urged Council to approve their sign package as proposed.

Ingles in-house counsel explained how Starbucks is a true franchise and that they regulate every aspect of their business from management on down. In addition, he felt the definition of "multi-tenant development" in the Code is fairly broad on purpose. In addition, he noted that in addition to Starbucks, that there is another tenant in the building - the sushi bar, which is separately owned and operated.

Mayor Bellamy closed the public hearing at 6:11p.m.

City Attorney Oast felt that since these are two separate properties, he suggested a separate motion for each site.

Councilman Mumpower explained why he felt the proposed signage package is not terribly out of scale and understands why the developer is requesting a sign package commensurate with their 21st century store. Therefore, he moved to approve the signage package for Ingles Markets located on 1865 Hendersonville Road, subject to the conditions outlined by City staff. This motion was seconded by Councilwoman Cape.

At the request of Councilwoman Cape, Ms. Tuch said that she is not a sign designer, but suggested some options for creative measures in addressing pedestrian orientation with signage.

Councilwoman Cape then asked for a friendly amendment to combine the 2 freestanding pylon signs at the street to one freestanding pylon sign.

Mr. Caputo said that they already have an existing non-conforming monument sign already on the 1865 Hendersonville Road property (which they need special approval to keep). The permit issued was to re-face the existing monument sign and leave the square footage as is. The "Gas Express" sign was an additional separate sign. The rationale for a "Gas Express" sign is strictly price. He asked that if they are required to combine the two freestanding signs, that they be allowed to take down the existing 25 feet in height sign (that they were going to re-face) and increase the height by an additional 5 feet for the gas pricing.

After a short discussion, Mr. Caputo suggested a compromise of a monument sign (instead of an additional freestanding pylon sign) for the "Gas Express" sign. That would reduce the height from 23 feet to 15 feet in height, which would be much more attractive.

Councilman Mumpower and Councilwoman Cape both accepted the compromise of re-facing the one existing freestanding monument sign (leaving the height and square footage as it is now) and adding one monument sign (for "Gas Express") at 15 feet in height and 125 square feet.

In response to Councilman Mumpower, Mr. Caputo explained the importance of the copy panel on the signs.

Councilman Newman agreed that our ordinance has not kept up with the changing trends and that it should be addressed through an amendment in our sign code standards. But, since that may take some time, he would support this action.

The amended motion made by Councilman Mumpower and seconded by Councilwoman Cape to approve the signage package for Ingles Markets located on 1865 Hendersonville Road, subject to the conditions outlined by City staff, with the exception of re-facing the one existing freestanding monument sign (leaving the height and square footage as it is now) and adding one monument sign (for "Gas Express") at 15 feet in height and 125 square feet, carried unanimously.

Councilman Mumpower moved to approve the signage package for Ingles Markets located at 85 Tunnel Road, subject to the conditions outlined by City staff, with the exception of re-facing the one existing freestanding monument sign (leaving the height and square footage as it is now) and adding one monument sign (for "Gas Express") at 15 feet in height and 125 square feet. This motion was seconded by Vice-Mayor Jones and carried unanimously.

Mayor Bellamy said that Ingles will be refurbishing other stores in our community and it might be helpful, in the future, to amend their plans before coming to Council if their original plans have been denied by other city bodies. She said Council wants to help Ingles be successful.

ORDINANCE BOOK NO. 24 - PAGE 208

Mayor Bellamy asked staff to add this proposed amendment to the other sign issue list.

At 6:45 p.m., Mayor Bellamy announced a short recess.

B. PUBLIC HEARING TO CONSIDER REZONING PROPERTY IDENTIFIED AS MONTFORD COMMONS LOCATED ON MICHAEL STREET, JASON STREET, WOODSIDE PLACE, GUDGER STREET, HILL STREET, BAY STREET, ELIZABETH PLACE AND BARFIELD STREET FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT, RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT, OFFICE BUSINESS DISTRICT AND OFFICE DISTRICT TO URBAN VILLAGE DISTRICT FOR REVIEW OF THE CONCEPTUAL MASTER PLAN FOR A MIXED-USE DEVELOPMENT

ORDINANCE NO. 3538 - ORDINANCE TO REZONE PROPERTY IDENTIFIED AS MONTFORD COMMONS LOCATED ON MICHAEL STREET, JASON STREET, WOODSIDE PLACE, GUDGER STREET, HILL STREET, BAY STREET, ELIZABETH PLACE AND BARFIELD STREET FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT, RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT, OFFICE BUSINESS DISTRICT AND OFFICE DISTRICT TO URBAN VILLAGE DISTRICT FOR REVIEW OF THE CONCEPTUAL MASTER PLAN FOR A MIXED-USE DEVELOPMENT

Mayor Bellamy opened the public hearing at 7:00 p.m.

Urban Planner Jessica Bernstein said that this is the consideration of an ordinance to rezone property identified as Montford Commons located on Michael Street, Jason Street, Woodside Place, Gudger Street, Hill Street, Bay Street, Elizabeth Place and Barfield Street from RS-8 Residential Single-Family High Density District, RM-8 Residential Multi-Family Medium Density District, Office Business District and Office District to Urban Village District for a mixed-use development. This public hearing was advertised on September 14 and 21, 2007.

Ms. Bernstein said that contrary to other review processes where all details are presented up front, the UV rezoning is initially based upon the conceptual master plan. Many of the final details for the project including landscaping, building design, materials and pedestrian amenities will not be reviewed at this point. Each project phase will be submitted in great detail and carefully review and approved by the Technical Review Committee (TRC) as separate Level II projects. Once the conceptual master plan (covering general street network, land use configuration, development intensity and structure heights) is reviewed and approved by City Council with recommendation from Planning & Zoning Commission, the project cannot substantially deviate from this guiding plan. Any significant changes to the master plan will require returning to City Council for review and amendment.

The project as proposed includes 51 parcels that have a combined total of approximately 9.89 acres (total project area approximately 11.33 acres), located near the Historic Montford neighborhood. The project is generally bounded by the Chamber of Commerce and Randolph Learning Center School on Montford Avenue to the east, the Montford Historic district to the north, the Isaac Dickson School and Hill Street to the west, and Hill Street and I-240 to the south. The current zoning of the project area is RS-8, RM-8, Office and Office-Business (OB). The rezoning to Urban Village provides unified zoning and a comprehensive development context that encourages mixed-use and vital pedestrian areas based on a conceptual Master Plan. A total of 6 existing structures are proposed to be demolished as a part of the UV development.

This project is currently divided into three phases with potential future phases on contiguous parcels. Overall, the development proposal includes 58,200 square feet of commercial space and both multi-family and single-family residential with some identified as senior living (10 single-family structures; 3 attached single-family – 9 units; 3 apartment structures – 120 units; 2 senior living structures – 81 units). There are 18 buildings with approximately 220 residential units, making an overall density of around 19 dwelling units per acre.

The development phases structure the proposed intensity of uses in a way that seeks to integrate with the surrounding neighborhood and existing uses. The commercial node and areas of highest density and building height are placed along Hill Street in Phases 1 & 2, where there is an existing commercial/office/business presence. Development intensity tapers off into single-family homes towards the historic Montford neighborhood and along the portion of the site that borders the Isaac Dickson School. These lower density residential nodes also incorporate large areas of public open space to create a more natural neighborhood feel and to buffer them from the higher-density multi-family and commercial development. Ample street trees and on-street parking throughout the project will further mirror a relationship with the adjacent neighborhood.

Buildings are proposed between one and four stories, with the two four-story structures sited along Hill Street. Building heights and project densities recede as the development moves away from Hill Street. A type 'B' buffer of 30' in width will be required along the portion of the site that borders with the residential Montford neighborhood (Phase 3) and elsewhere a type 'A' buffer of 20' is required, however the applicant is seeking alternative compliance and intends to preserve some of the existing vegetation. Landscaping details will be reviewed and approved during the subsequent phases (Level II reviews). Overall, street extensions and closures are proposed in a way that enhances connectivity throughout the Urban Village and into the Montford neighborhood.

A small portion of the project area falls within the Montford Historic District Overlay. The applicant will need to coordinate with the Historic Resources Commission for review of this parcel, or may want to consider requesting from City Council that this small parcel be removed from the district. Request for removal of the parcel from the overlay would be undertaken as an action separate from this rezoning and master plan approval.

The proposed UV rezoning promotes development similar to what the existing zoning in this area allows. RS-8 intends to provide higher density single-family development in areas with sufficient infrastructure and to maintain and protect residential character. Phase 3 of this rezoning project is located in this area and shares goals of the underlying district, with the SF homes proposed here. There is actually a lower residential density proposed in this phase than what would be allowed in RS-8 (5.8 units per acre). Phase 2 is located where the site is currently zoned RM-8, which provides for multi-family development. Although the proposed residential density is much higher (33.8 units per acre) this phase has a mix of SF attached and detached as well as MF structures, senior living and substantial open space. Office and Office Business, which are intended to serve as transition zones for the development of smaller scale office and retail uses adjacent to residential areas, are located in the Phase 1 area. In the proposed rezoning plan, the commercial uses are placed here adjacent to the existing office/commercial uses which will remain at this point.

Overall, the uses, building types and structure sizes proposed for this UV project are not unlike that allowed in the existing zoning and are placed similarly throughout the approximately 11.33 acre site. The benefit to rezoning and adoption of the master plan is to provide a comprehensive approach to neighborhood development, moving forward with a cohesive sense of community.

The applicants held a 3-day charette process (May 29-31, 2007) in the community to gather input towards the overall design and uses included in the Urban Village. They have also met on several occasions with the Montford Neighborhood Association and the Coalition of Asheville Neighborhoods and other local groups in order to facilitate open communication with the community throughout this process.

At their August 6, 2007, meeting, the TRC approved this project with the conditions listed in the staff report. A number of Asheville residents were present to relay their support of this project.

The Planning & Zoning Commission heard this request at their September 5, 2007, meeting and approved the rezoning and master plan by a 7-0 vote. However, they recommended the removal of one parcel (9649.17-10-1763) from the UV rezoning due to the fact that it is not contiguous to any other UV-zoned parcels. The applicant was amenable to this request and that parcel (also identified as parcel #51 on the submitted plans) has been removed from the request for rezoning. There were approximately 20-25 residents present at the meeting to convey their support towards the project, especially due to the senior living component, the variety of housing options, the infill nature of the project within such close proximity to downtown, the walkability of the site within the context of surrounding areas and general support for the Urban Village concept and how interactive the developer has been in terms of gathering community input. Communication was received from a number of neighbors with general concerns about how their property will be affected throughout the lengthy phased construction process and several adjacent landowners expressed their desires to be included in the Urban Village in a future phase. Staff explained that there is an opportunity to amend the master plan and rezoning request at a later date should additional parcels be included by the applicant, however the purchase and sale agreements between the developer and the individual property owners are to occur outside of any staff involvement. Staff also explained that should those properties remain zoned Office, the uses allowed are similar to office/commercial/residential uses permitted in UV, so they can still develop their properties in way that is similar to what will be developed around them. No negative communication directly related to the rezoning or conceptual master plan has been received.

The conceptual Master Plan submitted follows the requirements of the Urban Village district by indicating an acceptable general street network and land use configuration for this scale of development, as well as suitable open space, building heights, setbacks and building types.

Pros

- Provides a variety of uses and building types similar to a more traditional community, and is designed in a way to integrate into existing neighborhood.
- Infill projects locate development in an area where infrastructure already exists, resulting in more efficient use of land.
- Presents a walkable community (also walkable to downtown) with services that will benefit and/or complement existing adjacent uses.
- Project is suitable to support transit (over 8-16 dwelling units per acre) and is located on an existing transit route.

Cons

- Proposed rezoning is not inclusive of all properties in the area – pockets of parcels containing existing homes and businesses are not included and may have a slight piecemeal effect in areas.

Staff recommends approval of the rezoning request and adoption of the conceptual Master Plan for this Urban Village development.

Mr. George Gabler, representing Frontier Partners, LLC, spoke in support of this rezoning in that they have gone to great lengths to communicate with everyone who has a stake in this project. As a result of that conversation, the original plan (which included for a hotel as a centerpiece), has been amended to the plan before Council now.

Mr. Doug Brock, representing adjoining property owners along Hill Street who are encircled by the project, explained why they requested Council to (1) approve Phase I so the developer can start with this worthy project; and (2) require what is currently called Phase II be resubmitted with consistent rezoning and a resolution of all traffic concerns and for all of these modifications be acceptable to the remaining property owners, the city, and the developer and his assigns.

Rev. Christopher Chiaronmonte felt that even though this looks like a good development, however, it will raise property taxes for area residents.

Mr. Rob Close, former resident of the neighborhood, felt he was pressured to sell because of the threat of prolonged construction next to his home.

The following individuals spoke in support of the property being rezoned for this project:

Mr. Danny Sellers, property owner on Broadway
Mr. John Maultry, community member and Past President of CREIA
Mr. Bill Bailey, East Asheville resident
Mr. Kevin Kerr, adjoining property owner
A resident on Sweetbriar Court
Mr. Robert Howard, resident on South Oak Circle
Mr. Richard Tomialowicz, South Asheville resident

At 7:33 p.m., Mayor Bellamy closed the public hearing.

Councilman Newman moved for the adoption of Ordinance No. 3538 to rezone property identified as Montford Commons located on Michael Street, Jason Street, Woodside Place, Gudger Street, Hill Street, Bay Street, Elizabeth Place and Barfield Street from RS-8 Residential Single-Family High Density District, RM-8 Residential Multi-Family Medium Density District, Office Business District and Office District to Urban Village District, adopting the proposed Master Plan, subject to the conditions recommended by City staff and subject to (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this app'ication. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; and (5) This project will undergo final review by the TRC prior to issuance of any required permits. This motion was seconded by Councilman Freeborn.

In response to Councilman Mumpower, Ms. Bernstein reiterated that should the adjoining properties remain zoned Office, the uses allowed are similar to office/commercial/residential uses

permitted in UV, so they can still develop their properties in way that is similar to what will be developed around them.

When Councilman Mumpower asked about traffic and construction vehicles on Bay and Jason Streets, City Traffic Engineer Ken Putnam said that the plan is conceptual in nature. The City takes a hard look at construction phases of any and all projects. He said that any of the internal streets that come forward have to meet the City's current standards. If they are narrow now, they will have to meet the width standards, etc. and they will watch that very closely. He felt that between the staff and the developer, we can take the concerns raised by the public and make sure they are addressed.

At the request of Vice-Mayor Jones, Councilman Newman accepted the friendly amendment to include the neighborhood's objective concerns regarding staging of construction, with the measure being that the neighborhood is included in the conversation (not necessarily inclusion for a determined outcome) and that their concerns are constructively addressed.

In response to Vice-Mayor Jones about rezoning the adjoining properties, Ms. Bernstein said that Council can initiate the rezoning of those properties, but the Urban Village is directly linked to this Master Plan. City Attorney Oast said that there are a number of different classifications that would be compatible with the Urban Village District, but there are some logistical issues that would affect our ability to move ahead or make recommendations.

Vice-Mayor Jones suggested staff initiate a study of the area and to come back to Council with a recommendation on the appropriate zoning for that area. Ms. Bernstein said that there are many options available, but the property owners need to come up with what they want to see in that area as a whole.

In response to Councilwoman Cape, Ms. Bernstein explained that there is no physical development proposed in the Phase II site now, so the actual physical development involved in Phase II is just one building. They do, however, want to see roadway enhancement surrounding the entire area.

In response to Vice-Mayor Jones, Interim Planning & Development Director Shannon Tuch said that the Urban Village process is a form of conditional zoning. We do have some other urban districts (Urban Place, Urban Residential, Neighborhood Corridor, etc.) that could be applied to those properties if Mr. Brock and the other property owners wanted to come together and pursue their own rezoning application. They could pursue a straight rezoning and not even have to go with a conditional zoning at that time.

In response to Mayor Bellamy, City Attorney Oast said that at some later date if the applicants and the adjacent property owners come to some agreement as to an overall master plan, then they can come back to Council in order to get their properties rezoned and have the master plan amended to be included as part of this overall master plan.

In response to Vice-Mayor Jones, Ms. Tuch said that in this context, the two most compatible districts are Urban Place and Urban Residential. There are two options. One option is that a later date, this master plan can be amended to include those properties and the rezoning could also be applied at that time for Urban Village. The other option is the separate property owners could pursue their own separate application and not be a part of this master plan. They could pursue a straight rezoning or come back with a conditional zoning.

In response to Councilman Newman, City Traffic Engineer Ken Putnam explained different options to improve the intersection between Hill Street and Montford Avenue.

The amended motion made by Councilman Newman and seconded by Councilman Freeborn carried unanimously.

V. UNFINISHED BUSINESS:

A. RESOLUTION NO. 07-177 - RESOLUTION AUTHORIZING THE ASHEVILLE REGIONAL AIRPORT AUTHORITY TO PROVIDE A LEASE TERM TO ENCORE FBO ACQUISITIONS, LLC, THAT EXTENDS BEYOND THE TERM OUTLINED IN THE CITY OF ASHEVILLE AND ASHEVILLE REGIONAL AIRPORT AUTHORITY LEASE AGREEMENT

Mayor Bellamy said that this matter was continued from the August 28, 2007, meeting.

Chief Financial Officer Ben Durant said that at the City Council meeting on August 28, 2007, staff recommended that City Council approve a request from the Asheville Regional Airport Authority's to enter into a 30 year base lease, with an optional 10 years, with Encore Fixed Base Operator (FBO). Council continued this agenda item until September 25, 2007, requesting additional information from the Authority about the proposed lease. The Authority has provided the following documents for your review:

- A copy of the letter from the Federal Aviation Administration (FAA) indicating that the Authority is not in violation of any federal regulations and/or grant assurances based on the lease negotiated with Encore.
- Information regarding lease terms for similar type projects.
- A copy of the original letter sent to the FAA concerning the Encore lease and Million Air's allegations.

He also contacted CFO's in peer cities with airports to help assess the financial viability of the proposed Encore lease. He shared with Council the findings, noting that a 30-year lease is pretty conventional.

Ms. Patsy Brison, attorney representing Asheville Jet Inc., d/b/a Million Air, presented City Council with a letter dated September 25, 2007, outlining her comments. In summary, (1) they maintain that the proposed lease with Encore includes terms that are unfair and discriminatory in violation of federal grant assurances; and (2) they have concerns that City Council is not following a required State law in leasing property owned by the City of Asheville at the Airport beyond the lease term of the Airport Authority. She said that Million Air remains willing to and interested in re-negotiating its lease with the Airport Authority. They request that City Council deny the request of the Airport Authority to enter into a lease with Encore beyond the lease term between the City of Asheville and the Airport Authority or send the matter back to the Airport Authority to more carefully consider the matter.

Mr. David Edwards, Airport Director for the Asheville Regional Airport, responded to statements made and noted that this is a 30 year base lease for $3.5 Million investment initially. In order to get an additional 10 years and an option, they would have to invest another $4.5 Million on top of the $3.5 Million.

Mr. Victor Buchanan, attorney for the Asheville Regional Airport Authority, said that the Airport Authority was created in 1979 via an agreement between the County of Buncombe and the City of Asheville. At that time (and reaffirmed through agreements), the operation of the Airport was exclusively invested in the Airport Authority and part of that responsibility given, without reservation, was the seeking of business opportunities to the Airport. There was no veto power reserved by either the County or the City relative to those agreements. The only issue before the Council at this time is whether or not Council approves a term that goes beyond 2018.

Vice-Mayor Jones moved for the adoption of Resolution No. 07-177. This motion was seconded by Councilman Freeborn.

Mr. Edwards responded to Councilman Mumpower's questions, however, Councilman Mumpower still felt that this is such a complicated issue, he did not feel comfortable in proceeding without giving the City Attorney the opportunity to review the legalities of the claims and counter-claims presented.

In response to Councilman Mumpower, Mr. Edwards said that the lease agreement between the City and the Airport Authority expires in 2018, but there is a 25-year option that the Airport Authority has, at its discretion to exercise, if the Authority is kept in place past 2018. However, the joint agency agreement that created the Authority expires in 2018.

After a brief discussion, and in response to Councilman Mumpower, Mr. Edwards said that an aviation operation can pay ad valorem taxes or make a payment in lieu of taxes.

Mayor Bellamy asked that Mr. Edwards to formally ask Million Air if they would like to renegotiate their lease and that he advise Council when that has been done, which can be as simple as a copy of the letter sent to Million Air.

If the motion fails, Councilman Mumpower asked City Attorney Oast if he had enough guidance to address the questions that are open-ended. City Attorney Oast replied that he did.

The motion made by Vice-Mayor Jones and seconded by Councilman Freeborn carried on a 5-1 vote, with Councilman Mumpower voting "no."

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VI. NEW BUSINESS:

VII. OTHER BUSINESS:

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Police Citizens Review Board

Mr. Robert Close, Mr. David Ireland, Ms. Adrian Peterson and Ms. Rita Logan, representing the Citizens Awareness Coalition, explained the need for the City to implement a citizens review board of the Asheville Police Department, noting that the existing Citizens-Police Advisory Committee is not enough.

After discussion, Councilman Mumpower, Chair of the City Council Public Safety Committee, said that he would place this item on an upcoming agenda, inviting the public and the Citizens-Police Advisory Committee to attend and participate in the discussion. Because the regular meeting time is at 7:00 a.m. (set so people could attend before work) he would be amenable to changing that time in order to accommodate other schedules, if so asked.

In summary, Mayor Bellamy stressed the importance of communication and said that it is the majority of the Council's consensus to instruct the City Manager to (1) obtain information on best practices of what other cities have done to try to establish a relationship with the community by these police oversight boards; (2) provide information on the process of an SBI investigation; (3) explain how information is reported back to the community after an incident; (4) be clear on how, if the community has an issue with a police officer, does a citizen best address that; and (5) what is the State Bureau of Investigation's role and the District Attorney's role in determining cases and how they proceed. She said that we currently have the tool of a Citizens-Police Advisory Committee and one of their duties is to communicate with the community and to be our

liaison between the police and the community. If that is not effectively happening, then we need to look at what is happening with that communication breakdown. She asked that the report be brought back to Council in 45-60 days.

Other Issues

Mr. Gene Hampton, founder of Asheville-Buncombe and North Carolina Citizens Government, spoke to Council about the lack of quality management and the need to restore trust and confidence in the community.

Rev. Christopher Chiaronmonte spoke about the need of true affordable housing in Asheville.

Greenlife Grocery

Mr. Reid Thompson, resident on Maxwell Street, asked Council not to blame him for Greenlife violating the Unified Development Ordinance (UDO) and the City government not enforcing the UDO. The City Council has the power, duty and responsibility to resolve the issues of Greenlife on Maxwell Street and until that happens he will continue to ask Council to make Greenlife meet the requirements of the UDO and will continue to exercise all options afforded to him by the State Constitution to make this happen.

After a short discussion, Mayor Bellamy said that Greenlife is in the process of submitting plans to resolve many of the long-standing concerns and instructed the City Manager to give Council a written update on the no parking signs on Maxwell Street and the enforcement efforts.

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 9:02 p.m.

Kristina Lipe
CITY CLERK

Jerry W. Bellamy
MAYOR

Wednesday – October 3, 2007 - 9:00 a.m.
A-B Tech - Enka Campus

Special Meeting

Present: City of Asheville: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Keisha Lipe

State Delegation: Senator Martin Nesbitt, Representative Susan Fisher and Representative Bruce Goforth

Mayor Bellamy opened the meeting and thanked the State delegation for attending. She said the purpose of this meeting would be to begin dialogue about the City's interest in pursuing options for voluntary annexation while discussing thoughts and concerns about annexation in our City.

Interim Planning & Development Director Shannon Tuch reviewed with Council the following PowerPoint presentation: "We are here (1) to discuss what Asheville needs to be the healthy hub of our region; (2) to discuss what Asheville needs to manage development in a way that is proven to work; and (3) to discuss what Asheville needs to have sufficient resources to sustain our assets.

This is important because (1) a fiscally-strong Asheville is important for the region's economy; and (2) North Carolina's policy is that urban development is best served by cities.

There are three types of annexation - (1) voluntary - the property owner petitions to join the city or town; (2) involuntary - the city or town extends its boundaries unilaterally; and (3) legislative - the state legislature adds land to a city or town.

Cities annex for social and fiscal equity. Citizens living on the city's periphery enjoy many benefits offered by the city without paying for those benefits. Citizens living on the city's periphery cannot participate in the city's decisions that ultimately affect them.

Asheville's population grows by 50% during the day. This is the highest ratio of daytime population to residential population in the state for cities greater than 50,000. Asheville has the 15th highest ratio in the nation for cities 50,000-99,000 residents.

Fiscal arguments for why cities annex include (1) North Carolina's annexation law supports the state's prudent fiscal policies; and (2) the ability of North Carolina cities to annex is one reason why the state's municipal bond ratings have traditionally led the nation.

The following is Asheville's annexation history: 1797 - Town of Asheville; 1822 - 1/2 mile radius; 1850 - 1 mile radius; 1883 - City of Asheville; 1917 - Added West Asheville; 1959 - Large expansion by General Assembly; 1973 - First voluntary annexation; 1979 - Asheville Airport; 1980-1994 - 20 involuntary annexations; 2000-2003 - 20 involuntary annexations; and 1956-2003 - 65 voluntary annexations.

Annexation statistics of Asheville compared to Charlotte, Raleigh and Winston-Salem, North Carolina.

Challenges with current legislation: (1) eliminates incentive to voluntarily annex when property is in development stage (Asheville relies on involuntary annexation to grow); and (2) involuntary annexation requires urban development - occupied homes and businesses (when

property is annexed during development, people know what to expect when they purchase a home or business).

The challenge with one-mile limit is that the majority of developable land within a one-mile radius of Asheville already has water service.

Concerns about satellite annexations (1) NC State Statute requires that all voluntary annexations: (a) be within 3 miles of the city's corporate limits; and (b) receive the same level of service as the rest of the city, and (2) NC State Statute also states that a city's non-contiguous areas shall not exceed 10% of the city's contiguous area (a) there are more than 50 cities exempted from this requirement including Waynesville and Maggie Valley.

In summary, (1) voluntary annexation as a condition of water service provides for the incorporation of property during the development phase; (2) recent growth and development precludes the benefit of a half-mile or one-mile limit on annexation as a condition of water service; (3) North Carolina's policy is that urban development is best served by cities; (4) cities need annexation tools for fiscal health; (5) Asheville has used the annexation "tool" prudently, avoiding aggressive annexation; and (6) a fiscally-strong Asheville is important for the region's economy."

Chief Financial Officer Ben Durant reviewed the following in a PowerPoint presentation: "Asheville is Western North Carolina's regional hub city with a vibrant economy - (1) daytime population jump is the highest in the state; (2) city is center for government, commercial, financial, medical, and entertainment activity; (3) Asheville's unemployment 3.8% in 2006 vs. 5.7% North Carolina average; and (4) Asheville's water system continues to facilitate regional growth and development.

He reviewed the customer growth of the Asheville water system from 2003 - 2007.

Asheville's water system 2005-07 water system improvements include (1) asset management excellence; (2) environmental performance standards: ISO 14001 (first utility in the nation); (3) computerized maintenance system; and (4) Capital Improvements Plan (CIP Fee) - Plan generates $6 Million per year to allow for neighborhood improvements, replacement of old lines, and Water Treatment Plat improvements.

Unique financial constraints in Asheville include (1) other cities have diversified revenue streams granted through the General Assembly; (2) Asheville has no ability to maximize revenues as a "destination city"; and (3) area growth has detrimental effect on City's long-term ability to plan for future infrastructure needs.

Asheville water utility vs. other North Carolina cities include (1) state average differential is 85%; (2) Black Mountain and Weaverville is 80%; (3) no differential costs Asheville $6.2 Million per year in lost revenue (based on the state average); and (4) tax equity issue is 'should Asheville taxpayers shoulder future capital infrastructure costs improvements that serve the entire region'?

In summary, (1) Asheville needs resources to manager projected future growth; (2) a healthy Asheville economy drives a healthy regional economy; and (3) we need your help to do this.

The legislative proposal is to (1) grant the City of Asheville the authority to require voluntarily annexation of new development as a condition of water service for the area identified in the City's Resolution Identifying Areas Under Consideration for future annexation. Asheville would not seek exemption from the State's 10% rule regarding non-contiguous incorporated areas; and (2) grant the city a revenue source to adequately maintain and improve regional assets."

Using a large map of Asheville and the surrounding area, Mayor Bellamy outlined the various areas and asked that we focus on how Asheville can grow. Asheville has already talked to the Town of Woodfin about the annexation line and Woodfin has talked to the Town of Weaverville. In Mecklenburg County, all the townships came together and decided how big they were going to grow. What the Metropolitan Sewerage District (MSD) has decided was they don't want to extend sewer to Fairview. They made their decision based upon the zoning maps that Buncombe County adopted. In Asheville, there is already a growth pattern going south. We need to be realistic about how we are going to grow and where we are going to grow. As part of that growth management, we need to be realistic about the tools we are asking for. Leicester is asking to incorporate their township and Swannanoa is doing the same thing. We need to talk about these issues in an open forum. A lot of growth and development has occurred in the 1/2 mile and the 1 mile already and in order to be realistic about Asheville's future we need to look at not only the 1/2 mile or the 1 mile, but look at the area as a whole.

When Councilwoman Cape asked what our legislature sees as the future plan of regional development in the area and what role Asheville plays (as the water server) in that plan, Representative Goforth said that he agreed with Councilman Mumpower in that it's time we look at consolidation. He felt that Leicester and Swannanoa are organizing out of fear. He felt Leicester and Swannanoa are organizing out of fear, and we need to look at what we can do best for the whole county.

Representative Fisher said that in order for the City to be able to provide things that we enjoy and provide services that we count and depend on, isn't it just a foregone conclusion that the City must grow and must be able to bring in dollars in order to meet their expenses and in order to keep up with inflation. They cannot stand still. That doesn't mean that Asheville will take over Buncombe County. It means that in order to adjust for costs over time, Asheville has to grow. The way she sees it is that we already have laws in place for all other cities that allow for a particular amount of growth for cities. For Asheville that has been stifled. What has to happen is we have to think of ourselves as not only citizens of Buncombe County, but citizens of Asheville. Asheville is the economic driver and hub of the region. We have to look after the Mission Hospitals campus, several schools in our City, and small businesses - all within the City limits. We need to continue to grow. We need to give Asheville the same tools as every other city in this state in order to help them to grow.

Senator Nesbitt felt Asheville does have the tools that other cities have, except for the water system and that agreement was made in the 1930's. There are different types of growth. For instance, he said that 10 years ago Asheville wasn't selling condos in the old JC Penney building for $1,000 sq. ft. That's growth. If Asheville wasn't the hub of WNC for services, you wouldn't have buildings that have the value that they do in downtown Asheville. His point is that as a regional hub, Asheville needs people coming to Asheville in the daytime. That is giving Asheville tremendous growth in its tax base. Annexation is different. From all the studies that he has seen, annexation is not an economic boom to the City. The truth is that it costs as much to service as you get in tax revenue. The reason there is annexation is for planned, orderly, urban growth, and the City should grow where people need city services. He is familiar with a study that outlines mistakes that cities make when they annex, i.e., they say they are going to annex because they need their taxes. The city should annex because the people need their services. He said there is no government right giving a governmental entity the right to impose themselves on people who can't vote for them. Unfortunately when you extend that power with extraterritorial jurisdiction zoning and annexation, people start thinking that is a city right, but nothing is further from the truth. You have to treat people with respect, dignity and fairness when they outside the city limits. They come into the City and spend their money and help the tax base. When they need the city's services and when they become urban, then the City should annex them.

In response to Councilwoman Cape, Senator Nesbitt said that his vision of a regional plan is organized growth.

Councilman Newman agreed that we need to have conversation around consolidation, tax revenue, etc., but for today, it was his hope that conversation be focused on the question of voluntary annexation. For developments on the immediate periphery of the city (when there are new developments proposed that want connections to the water system), under what circumstances can the City require them to go ahead and come into the City on the front end. It was the staff's presentation to Council that persuaded most members of Council to agree that while a 1/2 mile is certainly better than nothing, there is a really strong case that it should be more than that. As long as we are not treading on parts of the county that we all envision being a part of some future other municipality that might be incorporated or is already incorporated, he asked why should Asheville, within those areas, not be able to operate under the same voluntary annexation mechanisms that most other cities in the state are working under.

Representative Fisher said that she would like to hear the staff perspective on how the City is hampered with the way annexation is set up under the current law.

Senator Nesbitt said that the legislature proposed that the City could do what Councilman Newman suggested within a 1/2 mile of the City, plus they exempted Asheville from the 10% requirement on satellite annexations. His concern was that Asheville will annex people in little satellites all over the County and leave them stranded. Even within Asheville's staff there are concerns about rolling services and the cost of those to those people. There is no way you can have a little subdivision one mile from the City limits and it in any way be equal and part of the City of Asheville. In fact, every commercial piece of property within one mile of the City would be stranded. The legislature earlier agreed to let Asheville strand them within 1/2 mile of the City because they think Asheville will grow to them under normal annexation. And after Asheville grows to them, then Asheville can go another 1/2 mile, then another 1/2 mile, etc. They put no limitation on that.

Councilman Newman said that if we were operating under the rules as the rest of the state does, when a new big development is built 1.5 miles from the City, the way that it would play out would be that we would not incorporate them now, because it wouldn't be cost effective for us to provide them city services. But, we would be able to go ahead and sign an agreement with them basically saying that we will provide them with City water and when the City does grow out to them, then the City will annex them - so everyone who lives there knows that at some point in the future they will be residents of Asheville. We wouldn't have a bunch of satellite places that we would be trying to provide services to, but we would have an understanding with them so in 10 years from now, or whenever the City has grown to that area, there is not some ugly involuntary annexation battle that everyone has to go through.

Senator Nesbitt said what the City asked for and what the legislature gave Asheville wasn't an agreement to annex in the future. Asheville asked for the ability to annex, because they wanted the tax base. He felt all the people in the isolated islands would be paying Asheville taxes. That was their concern. He wanted Asheville not to be able to annex people until they were contiguous and the delegation compromised to a 1/2 mile because it's better to tell people in the subdivision that they are going to be annexed up front than to find out after they buy the houses.

Councilman Freeborn said that the problem is that a good number of people are concerned about overall growth in the county. When municipal services, such as water and sewer, have to be given to anyone who requests them, that does not give any municipality or county government the ability to have any real planning for growth. As long as the Asheville water system is forced to give water to whoever requests it, then our conversations about other issues regarding annexation is moot. While annexation is a good tool and can be used extremely effectively, annexation is not going to solve our growth issues when we are looking at the overall picture. It would be nice if we did not have to give water to every new subdivision that requests it.

Councilman Davis said that revenue is important to all but we need to look at growth on a regional basis. One of the problems we are looking at is new subdivisions building just over the line and Asheville doesn't have any say in it because sewer and water are given. He would like to see us grow, but if we are not careful, we will end up with a big ring of population in the City of the very rich and very poor, and the middle class living outside the City limits. We need a healthy growth.

Water Resources Director David Hanks responded to Representative Goforth regarding developers coming to the City for water availability letters and why the City can't turn them down, even when they have safety concerns. Representative Goforth was hard pressed to believe that the City would lose money based on multiple pump stations for higher elevations and asked to see the costs associated with that statement.

Vice-Mayor Jones felt that conversation about regional growth is good but other people need to be at the table as well. She explained how the tool of water service is not an enhancement to annexation, but a very important part of it. She stressed that Council doesn't want to do involuntary annexations so they are asking our legislators to help us find ways to encourage voluntary annexation. She noted that for each involuntary annexation, staff provides a very detailed financial breakdown and she would be happy to provide the legislators with a sample of this very planned out and thoughtful document.

Councilman Mumpower shared Senator Nesbitt's concern of "giving Asheville too big a gun" because it worries him about what Asheville will do to their neighbors. That said, he disagrees with the legislators about Sullivan Acts II and III. He felt they have two options (1) to consolidate, or (2) to treat Asheville fairly like other cities are treated.

Mayor Bellamy summarized the topics of (1) 1/2 mile vs. 1 mile; (2) Asheville having the tools that other cities have; or (3) consolidation. She noted that staff has already articulated the concerns of using the 1/2 mile as it isn't realistic only because the area is built out.

In response to Senator Nesbitt, Ms. Tuch said that when they looked at the 1/2 mile consideration, they ideally wanted to map where the development was occurring within that 1/2 mile and look at the development permits. However, a good bit of that was outside our jurisdiction and we didn't have that information available, so we looked at the water meters. In addition, they also have an intuitive knowledge about what is going on because of their conversations with developers. One way to determine the development is to look at how much of that area is vacant. Using an aerial map, it shows there isn't a significant amount of land area that is not already developed within that 1/2 mile. It can, however, be developed heavier, but water service is already provided to that area, so the condition of water service wouldn't be helpful to encourage annexation. There are very few large land holdings (over 20 acres) in that 1/2 mile area so there is very little opportunity that would present itself for us to be able to grow our boundaries. Another concern with the 1/2 mile boundary is that it's an artificial boundary - it doesn't reflect where a lot of growth is occurring. If you look at the shape of Asheville's jurisdiction now, it's anything but geometric, so to say we are going to go 1/2 mile beyond and create an artificial boundary doesn't affect where growth is occurring.

In response to Mayor Bellamy, City Attorney Oast said that with respect to taxation, once the property is within the City, they will pay City property taxes just like everyone else in the City. In addition, they are entitled also to the same level of service as everyone else in the City. He also noted that in voluntary annexations, we are limited to a 3-mile radius from the City. He then explained the concern we have about phasing annexation, noting a provision in the statutes that states we can't annex anything less than a whole subdivision.

Councilman Newman said that if we just did the 1/2 mile with no ability to sign agreements with people outside that 1/2 mile area, in the short run, for the developments that are already built within the 1/2 mile (since the legislators won't allow Asheville to annex buildings that

are already built) that process would have to be through involuntary annexation. If we just have the 1/2 mile as a voluntary annexation tool, the area within the 1/2 mile area is already so built out, the concern will be that by the time the City has grown out to that 1/2 mile, through an involuntary annexation process, the next 1/2 mile is largely going to be built out as well. So, to a large degree within that area in years to come it will continue to be an involuntary annexation process. If we just have the 1/2 mile we will be just behind the development curve and the reality will be that the overwhelming percentage of growth the City goes through will be through the involuntary annexation process, which we all agree is not healthy for anyone. One way to address the concern that there will be a lot of satellite annexations, is that Asheville can't actually bring developments into the City within a certain distance (perhaps 1/2 mile), but we could still sign a voluntary annexation agreement when new developments beyond the 1/2 mile. If someone is building a significant development 1 mile away today and they want to connect to the water system, we couldn't annex them now, but sign an agreement with them that when the City has grown out and they are actually within a 1/2 mile of the City's true primary boundaries, at that point they would be annexed. That would address the concern of many satellite annexations away from where the City's boundaries truly are. We would get ahead of the development curve instead of constantly being behind it and stuck with the reality of involuntary annexation being the norm, rather than the exception.

There was a brief discussion, initiated by Councilman Davis, regarding future discussion regarding a menu of options for revenue since Asheville is expected to provide more and greater services all the time.

Mayor Bellamy said her goal would be that we have another conversation about the 1/2 mile vs. 1 mile area and instructed staff to provide the legislators with additional information on the 1/2 mile, along with maps. She did, however, point out the problem with the legislation that requires anyone to get City water without any question. She asked our legislators to take that into consideration in this annexation discussion. MSD has the authority to not grant sewer service and she hoped Asheville could have that tool for water service. There is also a desire by Council to get additional information about the various revenue tools that are available for other municipalities that the City of Asheville doesn't have. The consolidation issue can be further discussed as well.

Councilman Newman asked the legislation of they would be open to consider new developments that want to connect to the water system within 1/2 mile or 1 mile, that the City can require them to be annexed, but for some other area beyond that, we can sign annexation agreements - we wouldn't annex them until the City grows out either to them or very close to them - only then would they actually come into the City.

Senator Nesbitt's concern was annexing a satellite piece of commercial property 1/2 mile outside the City limits and taxing them until the City's boundaries actually are contiguous with them. He wants the properties to be contiguous with the City's boundaries before annexing.

In response to Councilman Freebom, Senator Nesbitt said the purpose of saying Asheville has to provide water is to prohibit Asheville from refusing to give water and stopping growth in the county. And that is a very real possibility. If we stifle growth in the County, it will hurt Asheville as a city and hurt all of us as a regional leader.

Mayor Bellamy said that the reality is the original 1929 agreement is serviced. We are talking about those areas that are not serviced by the original 1929 agreement. We need to get out of the core area and extend lines. People are asking for water in places that were not impacted by the original Sullivan Act and we are trying to get past that to address growth management.

Senator Nesbitt felt the Sullivan Act encompasses the core of the entire system - it means all the lines.

Councilman Newman felt that everyone agrees that we want to see involuntary annexation to be as rare as possible and we all agree that when people move into new developments it's good for them to know that the area will probably at some point be a part of Asheville. Let's set aside the issue of satellite areas. Let's assume the properties would be contiguous, although he would like to keep the option open of talking about satellite areas more. If we did just have where the development had to be contiguous, would there then be any reason why we couldn't extend that boundary out a ways and that way we are not putting involuntary annexation battles in future Councils. As long as the property meets certain criteria (larger developments), areas that are within Asheville's zone of future growth that people would be required to sign an annexation agreement and then when Asheville has grown out to them they would be voluntarily annexed.

Senator Nesbitt said that they would need to talk about it as a group, since all the legislators were not present. He did, however, think that nothing could be done before 2 years - the next long session.

In response to Representative Goforth, Mayor Bellamy said that City Council would put their proposal in writing and on a City Council agenda for the public input.

Senator Nesbitt noted that we have not talked about the County's obligations in this and they were substantial. He said they aren't going to settle the water issue and then get hammered over a room tax and a mixed beverage tax to make up for not taking the County's deal. He felt that all of these things need to be dealt with together.

Mayor Bellamy asked how the legislators felt about giving Asheville the authority to deny water service. Senator Nesbitt didn't disagree if Asheville could come up with some good way to do it. He said Asheville may want to put the County in charge of that outside the City limits. They only get the water if the County approves it. The problem is there is a history of the City refusing to service the County. You will not get the County to agree to let the City to decide on their growth.

Mayor Bellamy felt that a policy could be developed outlining the times when it wouldn't be prudent to use City water as opposed to a well.

Councilman Freeborn said Asheville is responsible for the budget of the water system and for us to be forced to put new lines on the system, even if the developer is paying for it, we still have to manage the on-going costs of that. No one wants to stifle growth, but it's better for our system and all our water users. If we want to start reducing water rates, which is our goal, the only way to do that is to have an efficient system. And, putting on anyone who wants it no matter where they are is not creating an efficient system and not good government.

Senator Nesbitt said that in government there are winners and losers. Asheville is talking about things you lose money on, but there are things that Asheville makes a lot of money on, like the room tax and sales tax on tourism. Mayor Bellamy noted that it's important to realize that we are happy for that generated revenue, but when people come visit, Asheville taxpayers are the ones who have to maintain the streets, sidewalks, litter control, street cleaning, etc.

Mayor Bellamy felt the only way we can move forward is small steps and thanked the legislators for their legislation for the Housing Authority.

Councilman Newman asked the legislators to keep an open mind on the satellite annexations. He said Swannanoa and Leicester will probably both be incorporated. When you think about those two new municipalities in the County, the overwhelming majority of the land that will be in those new municipalities would not, in the next century, meet the criteria for annexation.

Vice-Mayor Jones said that regarding the mechanism about sales tax, there is a choice to be made about how parts of the sales tax are allocated. The fair part is by population and not the current ad valorem. We will negatively be impacted financially by these new incorporations, because of the sales tax distribution. We have worked hard to reduce our tax base, but because of the way the ad valorem works, it has the mechanism that if we lower taxes on our residents, we are penalized from the sales tax.

Mayor Bellamy adjourned the meeting at 11:15 a.m.

Kendra Lipa
CITY CLERK

Jerry M Bellamy
MAYOR

Tuesday – October 16, 2007 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and Acting City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Davis gave the invocation.

I. PROCLAMATIONS:

Mayor Bellamy recognized Dr. Betty Young, new President of Asheville-Buncombe Technical Community College and said that the City of Asheville held a formal reception welcoming her to our community. Dr. Young spoke about her excitement of growing and sustaining A-B Technical Community College. Dr. Ann Ponder, Chancellor of UNC-Asheville also welcomed Dr. Young to Asheville.

Mayor Bellamy also said it was her honor to recognize the scientists at NOAA's National Climatic Data Center for their role with the United Nations' Intergovernmental Panel on Climate Change. This remarkable group of scientists was recently awarded the Nobel Peace Prize for their efforts to disseminate knowledge about man-made climate change. The IPCC has issued a series of reports on climate change. Hundreds of authors from all regions of the planet have devoted an incredible amount of time and expertise to writing and reviewing the reports. None of them has been paid for their time. Asheville boasts four lead authors of the most recent report, issued in 2007, three of which are employed by NOAA in our community. These citizens are Thomas Karl (Review Editor), David Easterling (Lead Author), Thomas Peterson (Lead Author) and Lennie Bernstein (Lead Author). In addition, more than half dozen other scientists who live in Asheville and work with the National Climatic Data Center served as contributing authors of the report. This achievement is a remarkable testament to the dedication, commitment and sheer talent of these professionals. She was extremely proud of their work, which is a watershed movement to comprehensively assess climate change. She was even more proud to say that these scientists are our neighbors, our friends and our colleagues in Asheville. She said that the City of Asheville is in the process of organizing a more formal reception for these individuals, but wanted to highlight them as extraordinary citizens.

A. PROCLAMATION PROCLAIMING OCTOBER 2007 AS "BREAST CANCER AWARENESS MONTH"

Vice-Mayor Jones read the proclamation proclaiming October, 2007, as "Breast Cancer Awareness Month" in the City of Asheville. She presented the proclamation to Ms. Denise Steuber and Ms. Janet Magruder, both from Mission Hospitals, who thanked Council for this recognition.

B. PROCLAMATION PROCLAIMING OCTOBER 2007 AS "FIRE PREVENTION MONTH"

Councilman Davis read the proclamation proclaiming October, 2007, as "Fire Prevention Month" in the City of Asheville. He presented the proclamation to Fire Chief Greg Grayson and Specialist Kelley Webb, who briefed City Council on some activities taking place during the month.

C. PROCLAMATION PROCLAIMING OCTOBER 16, 2007 AS "TRAVIS MILLER DAY"

Mayor Bellamy read the proclamation proclaiming October 16, 2007, as "Travis Miller Day" in the City of Asheville. She presented the proclamation to Mr. Miller, a Junior Lifeguard who made a life save at the Malvern Hills pool. On behalf of the American Red Cross, he was also presented with a Certificate of Recognition for Extraordinary Personal Action for his commitment to saving lives.

D. PROCLAMATION PROCLAIMING OCTOBER 20, 2007 AS "CONSCIOUS MOVEMENT DAY"

Councilwoman Cape read the proclamation proclaiming October 20, 2007, as "Conscious Movement Day" in the City of Asheville. She presented the proclamation to Mr. Accem Scott, representing A Circle of Light Healing, who thanked Council for their recognition noting that there should be conscious movement every day.

E. PROCLAMATION PROCLAIMING OCTOBER 27, 2007 AS "MAKE A DIFFERENCE DAY"

Councilman Freeborn read the proclamation proclaiming October 27, 2007, as "Make A Difference Day" in the City of Asheville. He presented the proclamation to Mr. Lance Edwards, representing the United Way of Asheville-Buncombe County, who thanked Council for their recognition.

II. CONSENT AGENDA:

At the request of Councilman Mumpower, Consent Agenda Items "A" and "F" - "K" were removed from the Consent Agenda for individual votes.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON SEPTEMBER 25, 2007, AND THE SPECIAL MEETING ON OCTOBER 3, 2007

This item was removed from the Consent Agenda for an individual vote.

B. RESOLUTION NO. 07-178 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY AN EASEMENT OVER A PORTION OF CITY-OWNED PROPERTY AT 70 WEST CHAPEL ROAD AT THE RAY KISIAH PARK TO RDG DEVELOPMENT FOR THE PURPOSE OF INSTALLING A SEWER LINE TO SERVICE A RESIDENTIAL SUBDIVISION

Summary: The consideration of a resolution authorizing the Mayor to convey an easement over a portion of City-owned property at 70 West Chapel Road at the Ray Kisiah Park to RDG Development for the purpose of installing a sewer line to service a residential subdivision.

The City owns property (PIN # 9657.19-52-1012) located on West Chapel Road that is currently maintained as the Ray Kisiah Park. The potential easement area is located on the Southern property line of the Ray Kisiah Park, running approximately 320 feet alongside West Chapel Road. This area consists of a grassed lawn with a swale that carries street runoff water. The Parks Department has stated that there are no proposed uses or plantings intended for this

area due to needed sight distance from the park's entry drive and the sloping terrain. Conveying this easement will have no effect on the Greenway Master Plan, in that no trail is proposed through this area and moreover, greenways can be constructed over underground Metropolitan Sewerage District (MSD) structures, with approval from MSD.

Considering the location of existing MSD structures, the requested easement would provide the most direct and efficient route to the sewer main. The easement would be solely for the purpose of installing and maintaining the sewer line and would not restrict the City from maintaining the current use and would not restrict the City from installing a sidewalk, if future plans arise.

Using updated tax valuations, the value of the easement was determined by averaging the City property land value with three other adjacent property land values to determine a per acre price, then reducing the per acre value by 50% to reflect easement interest. The easement comprises an area of approximately 6,238.8 square feet (0.14 acres) and the corresponding price for easement purchase is $ 2,932.

The Recreation Board has approved the easement to RDG Development LLC for this purpose. Approval of the resolution will authorize conveyance of the easement to RDG Development LLC for the purpose of a sewer line to service a subdivision.

Pros:

- Modest amount of compensation for the property
- The easement would not interfere with the operation of the Ray Kisiah Park nor any relevant future plans
- It would benefit a proposed, neighboring residential development

Con:

- A modest amount of land could not be used in the Ray Kisiah Park

Parks & Recreation and Economic Development staff recommends City Council approve a resolution authorizing the Mayor to convey an easement over a portion of City-owned property at 70 West Chapel Road at the Ray Kisiah Park to RDG Development for the purpose of installing a sewer line to service a residential subdivision.

RESOLUTION BOOK NO. 30 - PAGE 437

C. RESOLUTION NO. 07-179 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY AN EASEMENT OVER A PORTION OF CITY-OWNED PROPERTY AT THE NATURE CENTER LOCATED AT 75 GASHES CREEK ROAD TO JOHN REESE FOR THE PURPOSE OF A PRIVATE RESIDENTIAL SEPTIC FIELD

Summary: The consideration of a resolution authorizing the Mayor to convey an easement over a portion of City-owned property at the Nature Center to John Reese for the purpose of a private residential septic field.

The City owns property (PIN 9668.13-03-6345) located at 75 Gashes Creek Road that encompasses the Nature Center. The potential easement area is located along the southeast property line of the Nature Center, within an area that is maintained as a wooded buffer between the established residential neighborhood and City property.

John David Reese owns property directly adjacent to the Nature Center property, and would like to build a small home on his lot to replace the mobile home that he currently occupies. In order to accomplish this, the Buncombe County environmental inspector requires that his septic drain field be improved and enlarged. With the given narrowness of the lot, it is necessary

a small portion of the new drain field encroach upon City property to accommodate the repair area. The easement would be solely for the purpose of installing and maintaining a septic drain field and would not restrict the City from maintaining the current use as a buffer area. Conveying this easement will have no effect on the Greenway Master Plan, in that no portion of the greenway trail is proposed through this area.

Note that connection to a Metropolitan Sewerage District sewer main is not realistic in this situation. The closest sanitary sewer connection is over 500 feet in distance. Excavation of this incredible distance would be prohibitively expensive and would likely be complicated by the potential lines' depth necessary to achieve positive gravity feed and the probability of encountering rock.

The total area that Mr. Reese is requesting is 0.071 acres (3,092.76 square feet). The Buncombe County tax valuation of the Nature Center property is at $ 98,599 per acre. The easement value is calculated at 50% of the land value rendering an easement value of $ 3,500.

Pros:

- Modest amount of compensation for the property
- The easement would not interfere with the operation of the Nature Center nor any future plans
- It would benefit an existing, neighboring residential use

Con:

- A modest amount of land could not be used by the Nature Center

Parks & Recreation and Economic Development staff recommends City Council approve a resolution authorizing the Mayor to convey an easement over a portion of City-owned property at the Nature Center to John Reese for the purpose of a private residential septic field.

RESOLUTION BOOK NO. 30 - PAGE 438

D. RESOLUTION NO. 07-180 - RESOLUTION OF INTENT TO CLOSE A PORTION OF ATKINS STREET AND SET A PUBLIC HEARING FOR NOVEMBER 13, 2007

Summary: The consideration of a resolution of intent to close a portion of Atkins Street and set a public hearing for November 13, 2007

N.C. Gen. Stat. sec. 160A-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, David Matney, attorney at law, on behalf of 2130 Hendersonville Road, LLC has requested the City of Asheville permanently close a portion of Atkins Street.

Prior to the public hearing scheduled for November 13, 2007 agencies that may be affected by the closure of Atkins Street will be contacted, including Utilities, and City of Asheville Departments. The closure of Atkins Street will be presented to the Greenway Commission on October 11, 2007.

City staff recommends that City Council adopt the resolution setting a public hearing for November 13, 2007 to close a portion of Atkins Street.

RESOLUTION BOOK NO. 30 - PAGE 439

E. RESOLUTION NO. 07-181 - RESOLUTION OF INTENT TO CLOSE A PORTION OF THE RIGHT-OF-WAY FOR ROSSCRAGGON ROAD AND SET A PUBLIC HEARING FOR NOVEMBER 13, 2007

Summary: The consideration of a resolution of intent to permanently close a portion of the right-of-way for Rosscraggon Road and set a public hearing for November 13, 2007.

N.C. Gen. Stat. sec. 160A-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, David Matney, attorney at law, on behalf of 2130 Hendersonville Road, LLC has requested the City of Asheville permanently close a portion of the right-of-way for Rosscraggon Road.

Prior to the public hearing scheduled for November 13, 2007 agencies that may be affected by the closure of a portion of the right-of-way for Rosscraggon Road will be contacted, including Utilities and City of Asheville Departments. The closure of a portion of the right-of-way for Rosscraggon will be presented to the Greenway Commission on October 11, 2007.

City staff recommends that City Council adopt the resolution setting a public hearing for November 13, 2007 to close a portion of the right-of-way for Rosscraggon Road.

RESOLUTION BOOK NO. 30 - PAGE 440

F. RESOLUTION APPROVING ORGANIZATION AND PRESERVATION OF ASHEVILLE URBAN RENEWAL FILES AT THE UNIVERSITY OF NORTH CAROLINA AT ASHEVILLE

This item was removed from the Consent Agenda for an individual vote.

G. BUDGET AMENDMENT FOR THE ORGANIZATION AND PRESERVATION OF ASHEVILLE URBAN RENEWAL FILES AT THE UNIVERSITY OF NORTH CAROLINA AT ASHEVILLE

This item was removed from the Consent Agenda for an individual vote.

ORDINANCE BOOK NO. 23 - PAGE 214

H. RESOLUTION AUTHORIZING A PUBLIC HEARING TO BE HELD ON NOVEMBER 13, 2007, ON AN ECONOMIC DEVELOPMENT INCENTIVE GRANT TO VOLVO CONSTRUCTION EQUIPMENT NORTH CAROLINA INC.

This item was removed from the Consent Agenda for an individual vote.

I. RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH FIGG BRIDGE TO EVALUATE THE ASHEVILLE DESIGN CENTER'S ALTERNATE OF THE I-26 CONNECTOR

This item was removed from the Consent Agenda for an individual vote.

J. BUDGET AMENDMENT TO REFLECT BUNCOMBE COUNTY'S CONTRIBUTION FOR THE EVALUATION OF THE ASHEVILLE DESIGN CENTER'S ALTERNATE OF THE I-26 CONNECTOR

This item was removed from the Consent Agenda for an individual vote.

K. RESOLUTION STATING THE INTENT OF THE CITY OF ASHEVILLE TO ENTER INTO A CONTRACT WITH GREENPLAY, LLC, TO DEVELOP A PARKS & RECREATION MASTER PLAN

This item was removed from the Consent Agenda for an individual vote.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Davis moved for the adoption of the Consent Agenda. This motion was seconded by Vice-Mayor Jones and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON SEPTEMBER 25, 2007, AND THE SPECIAL MEETING ON OCTOBER 3, 2007

Councilman Freeborn moved to approve the minutes of the September 25, 2007, City Council meeting. This motion was seconded by Councilwoman Cape and carried unanimously.

At Councilman Mumpower's request to amend the October 3, 2007, City Council minutes to include Representative Bruce Goforth's comments regarding consolidation, he moved to continue approval of the October 3, 2007, minutes until November 13, 2007. This motion was seconded by Councilman Freeborn and carried unanimously.

F. RESOLUTION NO. 07-182 - RESOLUTION APPROVING ORGANIZATION AND PRESERVATION OF ASHEVILLE URBAN RENEWAL FILES AT THE UNIVERSITY OF NORTH CAROLINA AT ASHEVILLE

Summary: The consideration of a resolution approving organization and preservation of Asheville Urban Renewal Files at the UNC-Asheville and associated budget amendment in the amount of $10,000.

Over the years, the City of Asheville has participated in the United States Urban Renewal Plan. During this renewal, many of the neighborhoods in Asheville were substantively changed, along with the history of businesses and homes that existed prior to urban renewal. During this Renewal, the Asheville Housing Authority requested that the City of Asheville save and store many of the files relating to the original businesses and homes.

City staff determined that many of the original files, including photographs, were of significant historical value to the City of Asheville and its residents. Staff worked with Mountain Housing Opportunities to sort through an extensive number of original real estate files.

UNC-Asheville offered to organize, preserve and make available to the community these important historical documents, and staff made arrangements to have them delivered to the D.H. Ramsey Library on the UNC-Asheville campus.

UNC-Asheville has requested funding in the amount of $10,000 for processing of the documents. Processing includes, but is not limited to, preservation, organization, re-boxing, labeling, scanning, OCR, data entry, web-page development, data access management and data migration of the Urban Renewal Files.

This would be funded through the $100,000 in City Manager Contingency funding that was included in the adopted 2007/2008 General Fund budget.

Pros:

- The history of the businesses and homes that existed prior to urban renewal is important to the history of the City of Asheville.
- UNC Asheville has a valuable and heavily used special collection of historical archival information about the City of Asheville and the Western North Carolina region.
- UNC Asheville has a strong interest in providing scholarly access to urban Appalachian material for the community, the university and to scholars at large.
- The Urban Renewal of the south-side of Asheville was a significant historical event for the African American community and for Asheville UNC-Asheville Special Collections seeks to preserve and to share this important history with the community at large to better understand future urban re-development.

Con:

- Cost.

Staff recommends consideration by City Council a resolution approving organization and preservation of Asheville Urban Renewal Files at the UNC-Asheville and associated budget amendment in the amount of $10,000.

In response to Councilman Mumpower, Mayor Bellamy said that the work that has been done to preserve Asheville's history of what happened during urban renewal is monumental and the level of filing and documenting is important to be done correctly. She was pleased that we are partnering with UNC-Asheville and thanked them for their ability to accept this task to house a piece of Asheville's history.

Vice-Mayor Jones agreed with Mayor Bellamy that this is a great deal for what UNC-A is offering. She supported the local history program at UNC-Asheville, noting this is an excellent way that we can tap into our history from our home computers.

Vice-Mayor Jones moved for the adoption of Resolution No. 07-182. This motion was seconded by Councilman Newman and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 30 - PAGE 441

G. ORDINANCE NO. 3539 - BUDGET AMENDMENT FOR THE ORGANIZATION AND PRESERVATION OF ASHEVILLE URBAN RENEWAL FILES AT THE UNIVERSITY OF NORTH CAROLINA AT ASHEVILLE

Summary: See Item "F" above.

Vice-Mayor Jones moved for the adoption of Ordinance No. 3539. This motion was seconded by Councilman Newman and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 24 - PAGE 214

H. RESOLUTION NO. 07-183 - RESOLUTION AUTHORIZING A PUBLIC HEARING TO BE HELD ON NOVEMBER 13, 2007, ON AN ECONOMIC DEVELOPMENT INCENTIVE GRANT TO VOLVO CONSTRUCTION EQUIPMENT NORTH CAROLINA INC.

Summary: The consideration of a resolution authorizing a public hearing to be held on November 13, 2007 to consider an Economic Development Incentive Grant for Volvo Construction Equipment North America, Inc.

Volvo Construction Equipment North America, Inc. is an internationally recognized leader in the manufacture of construction equipment with a facility in Asheville. The company is

proposing new, taxable, capital investment of $20,000,000 for additional production equipment and facility improvements. Volvo Construction Equipment North America, Inc. has requested consideration for an incentive grant under the City of Asheville Economic Development policy. The City of Asheville is considering offering Volvo Construction Equipment North America, Inc. a performance-based grant totaling $599,200. The performance-based grant will be paid over a seven (7) year period. Payments begin after the investment is made, taxes are paid and verified, and the company requests payment.

North Carolina state law requires a public hearing be held before an incentive grant can be officially awarded.

City staff recommends Council approve a resolution authorizing a public hearing to be held on November 13, 2007 to consider an Economic Development Incentive Grant for Volvo Construction Equipment North America, Inc.

Councilman Mumpower said that we are basically rewarding Volvo for making a significant investment in the community. He was pleased to have them as a strong employer, but he was not comfortable with what some people call corporate welfare.

Mayor Bellamy was excited about setting the public hearing for the public to learn about what the City of Asheville is doing to invest in additional high paying jobs in our community.

Councilman Newman moved for the adoption of Resolution No. 07-183. This motion was seconded by Vice-Mayor Jones and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 30 - PAGE 442

I. RESOLUTION NO. 07-184 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH FIGG BRIDGE TO EVALUATE THE ASHEVILLE DESIGN CENTER'S ALTERNATE OF THE I-26 CONNECTOR

Summary: The consideration of a resolution authorizing the City Manager to execute an agreement with Figg Bridge in the amount of $70,000 to evaluate the Asheville Design Center's alternate of the I-26 Connector and the associated budget revision.

On August 14, 2007, City Council authorized staff to solicit proposals from qualified professionals to evaluate the Asheville Design Center's (ADC) alternative for the I-26 Connector. A Technical Review Committee (TRC) was established consisting of six professionals in the area of engineering, architecture and/or planning. This group consists of two representatives from the County, two from the City and two from the Asheville Design Center.

We received four proposals on September 12, 2007. The TRC reviewed the proposals and short listed three consulting firms. The TRC interviewed these firms on September 24, 2007. The committee selected Figg Bridge to perform the work.

Following Council's approval, Figg Bridge will be given a notice to proceed. The work will take ninety (90) days to complete the work. They should be complete by mid-January 2008.

Figg Bridge will evaluate the methodology the North Carolina Department of Transportation (NCDOT) used in their review of the Asheville Design Center's alignment. The consultant will meet with the NCDOT and review the criteria used to make its recommendation develop options to overcome the hurdles that NCDOT outlined their report. The consultant will then provide City Council with a report detailing their findings.

On July 24, 2007, City Council adopted a budget amendment appropriating $70,000 from the fund balance for this project. Since that time, Buncombe County has agreed to contribute $35,000 toward the cost of this project. The budget revision changes the original amendment that was adopted by City Council to reflect Buncombe County's contribution, thus reducing the fund balance appropriation by $35,000.

Pros:

- Assist the City in deciding how to move forward with the Design Center's proposed alignment.
- Buncombe County will be paying $35,000 toward the study.
- A technical review committee will be established to oversee the engineering process.
- The time schedule will meet the NCDOT's requested deadline.

Con:

- The cost to the City is $35,000.

Staff recommends that City Council approve a resolution authorizing the City Manager to execute an agreement with Figg Bridge in the amount of $70,000 to evaluate the Asheville Design Center's alternate of the I-26 Connector and the associated budget revision.

Councilman Mumpower felt there are strong arguments for design improvement, however, he was concerned that we are missing the urgency behind this project.

Councilwoman Cape moved for the adoption of Resolution No. 07-184. This motion was seconded by Councilman Freeborn and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 30 - PAGE 443

J. ORDINANCE NO. 3540 - BUDGET AMENDMENT TO REFLECT BUNCOMBE COUNTY'S CONTRIBUTION FOR THE EVALUATION OF THE ASHEVILLE DESIGN CENTER'S ALTERNATE OF THE I-26 CONNECTOR

Summary: See Item "I" above.

Councilwoman Cape moved for the adoption of Ordinance No. 3540. This motion was seconded by Councilman Freeborn and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 24 - PAGE 216

K. RESOLUTION NO. 07-185 - RESOLUTION STATING THE INTENT OF THE CITY OF ASHEVILLE TO ENTER INTO A CONTRACT WITH GREENPLAY, LLC, TO DEVELOP A PARKS & RECREATION MASTER PLAN

Summary: The consideration of a resolution stating the intent of the City of Asheville to enter into a contract with GreenPlay, LLC in the amount not to exceed $120,000 to develop the Parks and Recreation Master Plan.

On June 19, 2007, City Council approved $120,000 for the creation of a new Parks and Recreation Master Plan for the City of Asheville. After a thorough selection process the Parks and Recreation Department selected GreenPlay, LLC as the best consultant for this project and is seeking Council's approval to enter into a contract with GreenPlay, LLC in an amount not to exceed $120,000.

The City issued a Request for Proposals for Parks and Recreation Master Planning services and formed a panel composed of staff and Parks and Recreation Board, Art Board and Greenway Commission members to interview qualified consultants. The City received proposals from eight firms and short-listed five. The interview panel interviewed each of the five short-listed firms and scored each candidate on a list of baseline criteria. The panel came to a consensus that GreenPlay, LLC was the best match for the City and recommended their selection to parks and recreation director Roderick Simmons.

Pros:
- The contract amount will not exceed the approved project budget of $120,000.
- Entering into an agreement with GreenPlay, LLC to lead the master planning process will make staff resources available for other priority projects within parks and recreation while still participating in the master plan process.
- GreenPlay, LLC brings a unique approach to parks and recreation master planning and staff feel they will deliver a comprehensive and practical planning document to guide the growth of the parks and recreation services over the next ten years.

Con:
- Staff has not identified any disadvantages to contracting with GreenPlay, LLC

The Parks and Recreation Department recommends City Council approve a resolution stating the intent of the City of Asheville to enter into a contract with GreenPlay, LLC in the amount not to exceed $120,000 to develop the Parks and Recreation Master Plan.

Councilman Mumpower didn't believe elaborate and complex planning documents provide a reasonable return on investment for the City.

Councilman Freeborn moved for the adoption of Resolution No. 07-185. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 30 - PAGE 444

City Manager Jackson introduced the City's new Real Estate Manager Nikki Gunter.

III. PRESENTATIONS & REPORTS:

A. THE ASHEVILLE INITIATIVE FOR MATHEMATICS PRESENTATION FROM THE DEPARTMENT OF MATHEMATICS AT UNC-ASHEVILLE

Dr. Samuel Kaplan, Associate Professor of Mathematics at UNC-Asheville, said that the Asheville Initiative for Mathematics began in the fall of 2006 as a community outreach project run from the Department of Mathematics at UNC-Asheville. A community advisory group made up of educators and business leaders assists in setting priorities and identifying opportunities.

Their mission is to enhance mathematical education and numeracy (numerical literacy) in Asheville-Buncombe County for students (pre-K to college), teachers, parents and all residents.

Their current involvement includes (1) partnering with Randy Harter of Buncombe County Schools to write a N.C. Dept. of Public Instruction grant in support of professional development of 6-12 teachers in math. We were awarded $360,240 for this project; (2) working with Kathi Ballard of the Asheville Buncombe Education Coalition to start a math tutor certification program serving Asheville and Buncombe County Schools as well as after-school programs; (3) initiated an annual one-day workshop on the connections between math education and work-force development, civil rights, social justice and public health. The first Numeracy Summit is slated for February 28, 2008; (4) collaborating with others at UNC-Asheville and Mission Hospitals to bring Bob Moses,

the civil rights leader and founder of the Algebra Project to speak in Asheville on his life and work February 27, 2008; (5) starting a series of learning circles on math and civil rights at UNC-Asheville and Mission Health and Hospitals; and (6) seeking to establish a full scholarship program for math majors whose recipients are required to serve as mentors and tutors to P-12 students in Asheville and Buncombe County schools.

Long-term goals include (1) establishing an independent Institute with a full-time staff to promote positive and enriching mathematical experiences for students and workers in Asheville and Buncombe County; and (2) seeking to house four year-long residency positions at UNC-Asheville, Department of Mathematics, to facilitate the mission of AIM. A master teacher and three professors will help develop and direct activities for AIM as well as carry out their own writing and research.

He asked for (1) a letter of support from City Council for the National Science Foundation grant proposal; and (2) pending approval of the grant, cooperation with the City in effectively implementing the placement of Fellows in the Asheville City School system.

In response to Councilman Mumpower, Dr. Kaplan said that there are no City dollars involved.

Mr. Bruce McTaggert spoke in support of the project.

Councilman Davis moved to authorize a letter of endorsement from the City for the National Science Foundation grant proposal. This motion was seconded by Councilman Freeborn and carried unanimously.

In response to Councilman Mumpower, Mayor Bellamy suggested the City send a letter to the Asheville City School Board noting that City Council supports the grant proposal, as City Council has no direct influence over the Asheville City School system's participation in the program.

Mayor Bellamy thanked Dr. Kaplan for his leadership in this program. She felt it was great for them to bring this to the table and attempt to address some of the problems that we have with some of our young people.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING FOR PROPERTY LOCATED AT 47 RUTHERFORD ROAD FROM COMMUNITY BUSINESS II DISTRICT TO LIGHT INDUSTRIAL DISTRICT/CONDITIONAL ZONING IN ORDER TO ESTABLISH A CONFORMING OFFICE/WAREHOUSE USE WITH OUTDOOR STORAGE

Mayor Bellamy said that this public hearing was continued from March 13, 2007, at the petitioner's request. In addition, on April 17, 2007, City Council granted a six-month continuance in order to explore other zoning options.

Assistant Planning & Development Director Shannon Tuch said that on August 12, 2007, the Planning & Development Department received a letter from SigNet Real Estate, LLC withdrawing the conditional zoning request. We understand that the applicant is investigating the possibility of legally grandfathering the non-conforming uses.

B. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF PROPERTY LOCATED AT 100 PARK AVENUE FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/CONDITIONAL ZONING FOR THE

DEVELOPMENT OF A 41-UNIT MULTI-FAMILY PROJECT WITH MODIFICATIONS TO SETBACK REGULATIONS

ORDINANCE NO. 3541 - ORDINANCE TO CONDITIONALLY ZONE PROPERTY LOCATED AT 100 PARK AVENUE FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/CONDITIONAL ZONING FOR THE DEVELOPMENT OF A 41-UNIT MULTI-FAMILY PROJECT WITH MODIFICATIONS TO SETBACK REGULATIONS

Mayor Bellamy opened the public hearing at 5:58 p.m.

Urban Planner Alan Glines said that this is the consideration of an ordinance to conditionally zone property located at 100 Park Avenue from RM-8 Residential Multi-Family Medium Density District to RM-16 Residential Multi-Family High Density District/Conditional Zoning for the development of a 41-unit multi-family project with modifications to setback regulations. This public hearing was advertised on October 5 and 12, 2007.

Mr. Glines said that the developer is seeking conditional zoning approval from RM-8 to RM-16 to build 41 condominium units on a 3.25 acre site. The proposed density is just over 12 units per acre. In addition the project is requesting a modification for the rear setback for building 7. Four of the smaller units in building 7 will be affordable units meeting City of Asheville standards for affordability.

The project is located on the site of the former Pioneer Welding Company. The industrial use was located in this residential area for many years. The business relocated and the buildings were dismantled to be recycled. The site was graded and mostly cleared of vegetation during this former use. At some point in the past, fill was placed along Jefferson Drive to expand the flat area at the top of the property. This slope is quite steep with few trees and is about 40 feet between Jefferson Drive and the top. There are existing trees on the site that will be protected and saved under the current proposal and are shown on the site plan. The two large oaks on the southern side of the property will be preserved. The steps shown on the plans and connecting to Jefferson Drive will be carefully placed to limit the number of trees that must be removed to accommodate the walkway.

The proposed development includes 41 units in seven buildings. The development provides four 3-bedroom units, 27 two-bedroom units and 10 one-bedroom units. The development will have vehicular access from Park Avenue by an existing one-way driveway loop and a proposed second driveway on Park Avenue. All of the structures will face Park Avenue and the loop driveway except Building 6 and Building 3. Building 3 (a town-home building) will face into the site because this section of the property is well above Park Avenue right of way area. The relationship to the internal part of the site is stronger. Building 6 faces the parking area that flanks it but will provide a porch area on the Park Avenue side of the building (rendering provided for this). Building elevations have been provided in the submittal materials. The buildings generally use a combination or shingle, siding and some stone at the building base. Porches and balconies are prevalent on the units and the longer structures provide variety by staggering the facades to improve the scale of the structures. The height of the units will be within the limit of 40 feet which is allowable in the RM-16 district. The building designs should complement and be compatible with the residential character of the neighborhood. Parking is provided on site. The development is providing 67 parking spaces that will be divided between garage parking and in surface lots. This number is within proper range for parking.

The project was submitted earlier this year with 39 units. The community was concerned with impact on the neighborhood because of the single access on Park Avenue and the proposed prices of the new units which were thought to be higher than the rest of the neighborhood. Neighbors requested affordable units be included as a part of this project. The layout has

remained mostly the same but Building 7 was adjusted to provide the 4 affordable units. The neighbors also requested the project provide for a future connection to the City of Asheville Transit Center should that property be re-developed. A space for this future driveway was accommodated between buildings 6 and 7.

The project has been reviewed by the Technical Review Committee (TRC) and was found to comply with requirements of the Unified Development Ordinance (UDO) with minor changes to be provided with final TRC review. There is a modification request for a rear setback for building 7. The rear setback is based on the number of units in a building (14 units in this case) and for Building 7 totals a 35 foot setback. A section of the building and deck will encroach into the setback as shown on the plans by 8 feet. Part of the reason for placement of building 7 setback as proposed is to accommodate a future driveway between buildings 7 and 6 and provide space for the affordable units. The single neighboring home along Jefferson Drive is about 40 feet below this area and should not be adversely affected by the rear setback modifications. The developer is willing to provide additional planting materials to screen the structure at this point as well. The grade change and the planting should minimize the effect of the setback modification. The site plan shows the proposed layout of Building 7 with a 27 foot setback (which represents the 8 foot rear setback modification).

The project will be seeking Health Built Home designation by meeting guidelines concerning sustainable building practices and provide for energy efficiency. The site plan will be providing an area for water infiltration on the site reducing stormwater run-off. In addition the kudzu problem along the Jefferson Street will be cleaned up on the project site.

Section 7-7-8(d)(2) of the UDO states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   The development has been reviewed by the Technical Review Committee and the project has not been found to present a danger to public health and safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
   The development will not require significant grading. The development has proposed to preserve some important trees on the site. The development will provide a neighborhood pedestrian connection from Park Avenue to Jefferson Drive which does not exist today.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
   The project is not expected to injure the value of existing homes in the area. The proposal will be a substantial investment in residential development that should complement the existing neighborhood.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
   The proposed structures have a residential character that will be in harmony with the scale bulk coverage and density and character of the neighborhood. The structures are grouped in a town home and condominium style that groups the units in a way that provides open space and a connection for the neighborhood and preserves some of the more significant trees on the site. The proposed use is certainly compatible with the

residential character of the neighborhood. Affordable units will be provided within the project and are needed within the community.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
The comprehensive plan recommends and encourages quality, compatible infill development in places where the infrastructure is in place to support the development. Affordable housing is identified as a community challenge and is being offered in a portion of this development. The smart growth policy supports this type of residential infill in neighborhoods.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
The proposed development has been reviewed by the Technical Review Committee and the area has sufficient infrastructure either on-site or available to the site with infrastructure extensions. Water is available to the site from Jefferson Drive.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
The City Traffic Engineer has reviewed the plan for the development and feels that Park Avenue has sufficient width to support the plan even with the existing parking on the street. The number of units does not justify a traffic impact analysis because of the small scale of the development. Some of the concerns from neighbors are mainly associated with on-street parking occurring in the neighborhood along Park Avenue.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

This conditional zoning request was recommended for approval by a 5-0 vote by the Planning and Zoning Commission. One person spoke on behalf of the West-End Clingman Avenue Neighborhood Association in support of the proposal.

Pros:

- A former industrial site is being redeveloped.
- The proposed development will complement the existing residential fabric of the neighborhood.
- The development will provide a pedestrian connection linking two areas of the neighborhood that are separated today.
- Affordable units are provided in the project and are identified as a priority issue in the community.

Cons:

- Additional traffic will be added to Park Avenue which has concerned some neighbors.

This conditional zoning request was recommended for approval by a 5-0 by the Planning and Zoning Commission with the recommendation to approve the Building 7 setback modification. Staff concurs with this recommendation.

Mr. Gerald Green, representing GreenPlan, spoke in support of this conditional zoning. He felt that this plan meets several City goals and reiterated some of the highlights of the project and their requested setback variance.

Mr. Hank Joiner, developer, showed Council a historic view of the area. He said they met with the neighborhood and addressed their concern regarding scale of the new buildings in relation to existing structures. He reviewed the fabric of the West End/Clingman Avenue Neighborhood (WECAN) by noting 19% of the lots are less than 0.08 acre; 27% of lots are vacant; 33% of lots are builder/investor owned; and 24% are non-owner occupied. He reviewed some of the property values of the homes in the neighborhood and prices of recent sales. He noted the existing affordable housing in the neighborhood provided by Mountain Housing Opportunities - Prospect Terrace and WECAN area housing (25 affordable units total), Merritt Park (9 affordable units), and Clingman Avenue Townhomes (11 affordable units). Mathews Architecture designed a modern-day architectural interpretation of the neighboring early 20th Century history. He briefly reviewed the final site plan and noted two changes made from the Planning & Zoning Commissions recommendations: (1) added four "affordable" units, each one bedroom - partnering with Mountain Housing Opportunities on these units; and (2) improved the pedestrian connection to Jefferson Street. He said 100 Park Avenue North will be built green with a commitment to become certified through the NC Healthy Built Home Program. Already an environmental study was conducted by the N.C. Dept. of Environmental and Natural Resources finding no contamination in the soil from the removal of all underground storage tanks and the industrial buildings on the site were disassembled and reused in another location. A conscious effort was made during planning to (1) save the existing mature trees; (2) add common green space; (3) offer pedestrian connections to the neighborhood; (4) save in place the old stone wall; (5) minimize grading by retaining 57% pervious surfaces; (6) implement environmentally-sensitive stormwater management through bio-detention commonly known as "rain gardens"; and (7) all units will be healthy built certified. They met with WECAN several times. The following changes to the project plans were implemented as a result of the request of neighbors both on the hill and in the River Arts District: (1) re-alignment of buildings; (2) future possible connection to the transit site; and (3) more parking on this site to reduce the potential number of cars parking on the street. WECAN still has some concerns, but they remain optimistic and welcome new neighbors.

Mr. Jesse Junior spoke in support of the plan.

Mr. Alan Ditmore, Treasurer of the Asheville Homeless Network, said that affordability is a function of supply and demand and therefore, any additional units will positively affect affordability county-wide.

Mayor Bellamy closed the public hearing at 6:16 p.m.

In response to Vice-Mayor Jones, Ms. Jane Mathews, representing Mathews Architecture, said that at this time Healthy Built Homes is the North Carolina program for residential construction certification program.

In response to Councilwoman Cape, Ms. Mathews explained how the certification process works.

Vice-Mayor Jones urged the developer to think of ways they can participate with the neighborhood in reclaiming Aston Park.

Mayor Bellamy complimented the architect for the great design while Mr. Green responded to her comments regarding the trail around the property.

In response to Councilman Newman's inquiry about the neighboring large piece of N.C. Dept. of Transportation (NCDOT) right-of-way along Clingman Avenue, Mayor Bellamy said there are plans for the streetscape to change. Mr. Green said that they did contact NCDOT early in the process and they are still waiting for a response.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3541, to conditionally zone property located at 100 Park Avenue from RM-8 Residential Multi-Family Medium Density District to RM-16 Residential Multi-Family High Density District/Conditional Zoning for the development of a 41-unit multi-family project with the Building 7 setback modification, subject to (1) the conditions recommended by staff and (2) The project shall comply with all conditions outlined in the TRC staff report; (3) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; (5) This project will undergo final review by the TRC prior to issuance of any required permits; and (6) Four units will be offered at an affordable price meeting City of Asheville guidelines for affordability. This motion was seconded by Councilman Newman and carried unanimously.

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Closed Session

Mayor Bellamy said that during City Council's break, they would conduct a closed session. At 6:25 p.m., Councilman Mumpower moved to go into closed session in order to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: Louise Pack Metcalf, Barbara Pack Holcombe, Michael Lawrence, Black Dog Realty LLC, and Buncombe County - The statutory authorization is contained in G.S. 143-318.11(a)(3). This motion was seconded by Councilman Freeborn and carried unanimously.

At 6:50 p.m., Councilman Davis moved to come out of closed session. This motion was seconded by Councilman Freeborn and carried unanimously.

C. **PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR THE PROJECT KNOWN AS THE ELLINGTON HOTEL, LOCATED ON BILTMORE AVENUE, ASTON STREET AND SOUTH LEXINGTON AVENUE TO INCLUDE 125 HOTEL ROOMS AND 52 RESIDENTIAL CONDOMINIUMS**

ORDINANCE NO. 3542 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR THE PROJECT KNOWN AS THE ELLINGTON HOTEL, LOCATED ON BILTMORE AVENUE, ASTON STREET AND SOUTH LEXINGTON AVENUE TO INCLUDE 125 HOTEL ROOMS AND 52 RESIDENTIAL CONDOMINIUMS

Mayor Bellamy said that this public hearing was held on September 11, 2007, and the matter was continued to this date in order to receive new information on the reduction of height of the building, clarification on the LEED certification efforts, and the issue of eliminating the driveway cut on Biltmore Avenue. Receipt of new information will be limited to those issues.

Mayor Bellamy then re-opened the public hearing at 6:55 p.m.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

Acting City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Alan Glines said that the conditional use permit request for the Ellington Hotel consisting of a 125 room hotel and 52 condominium units in a mixed use building in the downtown central business district of Asheville was originally considered by City Council on September 11, 2007 (City Exhibit 6 - Memorandum dated October 16, 2007; City Exhibit 7 - Aerial Map). The purpose of this report is to summarize the list of items for developer consideration and to provide a summary of the developers' responses.

During the meeting, many comments were given and several motions were made and withdrawn. A motion however, to continue the item until the October 16, 2007, meeting was approved. During the hearing City Council provided a list of items for the developer to consider regarding the project. Many of the items were based on impacts to the community and surrounding area and concerns raised by citizens and Council. The final list summarized here is taken from the meeting minutes. Of course this may not be a final list and is not binding until a final vote is taken by City Council. The list is as follows: (1) The project shall comply with all conditions outlined in the Technical Review Committee (TRC) staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (3) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; (4) This project will undergo final review by the TRC prior to issuance of any required permits; (5) Approval of the sidewalk modification on Aston Street; (6) Rear or front accesses to the businesses not be disruptive (work with the City to plan any instances where they may bring in a big load of material and an exit or entrance may be blocked for a nominal period of time); (7) that the developer work with the neighborhood regarding staging of the construction with adequate signage; (8) the 35 sustainable design items be achieved as proposed by the developer; (9) the Arts Program as proposed by the developer; (10) the Affordable Housing Program with the Community Foundation of Western North Carolina as proposed by the developer; (11) use of Lexington Street to deliver building materials in order to keep as much construction traffic off Biltmore Avenue; (12) a detailed stormwater plan in place at the TRC level; (13) a website to keep the neighbors informed of the project as it progresses - and perhaps list street closings; (14) shuttle service be limited to 8:00 a.m. - Midnight with no PA after 10:00 p.m.; (15) the developer provide an ombudsman person to manage community comments, manage the schedule for nearby neighbors, and also provide an interface for people affected by the development during the construction phase of the project; (16) everything else the developer included in his package; (17) eliminating the drive-way curb cut along Biltmore Avenue and designing for other access points; (18) left-turn restriction be applied during the weekdays only (not applicable on the weekends) and at specific times; (19) Biltmore Avenue not used for the staging for this project; (20) any utilities (specifically mentioned were the poles on the Lexington Street) be placed underground; and (21) a plan of either dimming or cutting off the lights at 11:00 p.m. for migrating birds.

Since the Council meeting on September 11, the development team has been working to address these particular items and concerns. Amended materials have been submitted to staff for distribution to City Council for the meeting on October 16, 2007. This new information and changes to the plan are submitted for consideration. Not every sheet or drawing has been re-submitted - only the sheets that shows changes. The developer has proposed to reduce the height of the building by two stories which will represent a reduction in the overall height of 31 feet. The terrace space at the front of the building above the ninth floor has been redesigned to accommodate the building area displaced by the change in height. This concept was presented by the project architect during the hearing on September 11 (Attachment to City Exhibit 6 - View of the Ellington from Biltmore Avenue). In addition to the height reduction, the developer has agreed with the following items (numbering may not agree completely with the above referenced list):

(1) The project shall comply with all conditions outlined in the TRC staff report;
(2) All site lighting will comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets;
(3) The building design, construction materials, and orientation on site will comply with the conceptual site plan and building elevations presented with this application. Deviations from these plans may result in reconsideration of the project by the reviewing boards;
(4) This project will undergo final review by the TRC prior to issuance of any required permits;
(5) Aston Street sidewalk modified as proposed;
(6) Rear or front accesses to nearby businesses will not be disrupted; the developer will coordinate with City and project ombudsman when large loads may block entrances or exits for a nominal period of time. Adequate signage will be provided
(7) The project will be LEED eligible providing 36 items for LEED certification. LEED certification can only be applied for after the building is open and all systems are operational;
(8) The Arts Program will be implemented as outlined in the proposal with art shadow boxes provided along Aston Street and Lexington Avenue;
(9) The Affordable Housing Program will be coordinated with the Community Foundation of Western North Carolina as proposed in earlier materials;
(10) Lexington Street will be used to deliver building materials with staging occurring on the lot located at 86 S. Lexington Avenue in order to keep construction traffic off of Biltmore Avenue;
(11) A detailed stormwater plan will be in place for final TRC review;
(12) A website will be created to keep the neighbors informed of the project as it progresses noting closures and other construction related information;
(13) Shuttle service will operate using alternative fuel vehicles and be limited to 8:00 a.m. - Midnight;
(14) An ombudsman will be hired to manage community comments, manage the schedule for nearby neighbors, and also provide an interface for people affected by the development during the construction phases and staging of equipment and materials for the project;
(15) Left-turns from Biltmore Avenue into the hotel entrance will be day or time restricted as required by City Council with signage if required and consistent with directional materials provided by the hotel;
(16) Biltmore Avenue will not be used for the staging for the project;
(17) Utility poles in the vicinity of the project will be placed underground;
(18) The building penthouse lantern will be dimmed during the September and October song bird migration and again during the April and May migration periods;
(19) The development will participate in the NC Green Power Program to develop renewable source energy at the 'champion level' of support';
(20) The project will participate in the 'Green Plan for Hotels' program administered by the NC Division of Pollution Prevention and Environmental Assistance;
(21) Other items will be included in the project as noted in earlier submitted materials such as a retail space along Aston, café space along Biltmore, shared laundry facilities off site, quality building materials as noted on drawings.

Finally, the developer has provided materials and analysis to compare the height and massing of the BB&T Building and the Ellington proposal. The BB&T Building uses a nearby garage for parking. When this information is compared with the Ellington proposal the differences are reduced.

The Planning and Zoning Commission voted to recommend approval of the project 7-0 during the August 1, 2007, meeting. Staff concurs with the recommendation.

City Attorney Oast said that on September 11, 2007, Councilman Davis made a motion (which was not seconded), but which was pending when the matter was continued. Therefore,

procedurally, it was his opinion that Councilman Davis should withdraw his motion without prejudice to him or anyone else making a similar motion later on. Councilman Davis, therefore, withdrew his motion.

Mr. W Louis Bissette Jr., attorney representing the Ellington Partners, developer of the Ellington project, briefly summarized (Applicant Exhibit 4) (1) the economic impact over 10 years of the project; (2) the workforce housing; (3) the Ellington/Grove Park shuttle; (4) the ombudsman; (5) the migratory song birds; (6) the parking/pedestrians/transportation issues; (7) sustainability; (8) the height and massing revisions; and (9) the height and massing of other Central Business District buildings. Regarding the workforce housing, he understood that the Buncombe County Commissioners did pass a resolution today committing $455,000 of their share of the property taxes annually to affordable housing. Regarding the migratory song birds, they will dim the penthouse lantern and exterior lighting after 11:00 p.m. during the Spring and Fall migratory seasons. They agree to no left turns off of Biltmore Avenue into the Ellington. He said that their employees will be transported from off-site parking areas on Riverside Drive and was proud to announce that the developer entered into a contract with the City of Asheville for the Grove Park Inn and the Ellington to pay the cost of public transportation for all Grove Park Inn and Ellington employees who desire to ride the Asheville Transit System. That payment will not only include just transit to and from work, but it will be available to those at any time and without cost to them. In addition to the 35 green items previously said they were going to put into the project, the Grove Park Inn has agreed to purchase a closed loop laundry recycle system for their laundry, which handles both their laundry and the Ellington's laundry. It's their understanding that this system will save 1.5 Million gallons of water per month. They will also contribute to the N.C. Green Power Program at a "champion level", which is at least $24,000 a year. They will comply with the N.C. Division of Pollution Prevention and Environmental Assistance Initiatives for Hospitality and Lodging Properties for the "Green Plan" for hotels. In response to the City's desire for smart buildings, the Ellington partners are proud to announce that the Ellington Hotel will be a U.S. Green Building Council LEED Registered Project for Core and Shell Building Design and Construction Process. The partners will seek for LEED certification of the project after completion and upon occupancy. If that occurred today, the Ellington would be the first LEED certified building in Asheville, the second LEED certified building in Buncombe County, the 24th LEED certified building in North Carolina, and the 1st hotel LEED certified building in North Carolina. Regarding the height and massing concerns, the developers and architects have designed an alternative structure which will reduce the height of the Ellington by 31 feet and eliminate 2 floors. At the new height, the Ellington will be only 7 feet taller than the BB&T Building as measured from the tops of the elevator towers on both buildings. As far as the massing is concerned, he provided additional information on comparable buildings in the Central Business District, including the BB&T Building, which confirms the Ellington's harmony with the scale and density in its Central Business District neighborhood.

Mr. Gary Koerner, the project's architect, provided Council details on the alternative design of the Ellington. He reviewed information on comparable buildings (Attachment to Applicant Exhibit 4 - Comparable Elevation) and showed a 3-D view of the buildings downtown. He then addressed the comparison of what they did in the two designs (Attachment to Application Exhibit 4 - Comparison of the Original Design Building next to the Comparison of the Alternative Building Design). He urged Council to approve the project in that the Ellington is smart growth, has workforce housing, includes public transportation, will be LEED certified, includes an art program, has economic benefits, and will be a landmark architecture building.

When Mayor Bellamy asked for the organized opposition, Mr. Bob Malkin, representing Asheville Citizen Voices, showed Council a large 3-D model of the Ellington and surrounding businesses (Neighborhood Exhibit 5). The scaled model is 200 feet above Biltmore Avenue and is out of scale with the neighboring businesses. If Council approves this large structure, then others will follow (Neighborhood Exhibit 6 - Photo of Downtown Area 350 Miles Away from Asheville). He showed Council some preliminary artwork of the newly formed Asheville Citizen Voices (Neighborhood Exhibit 7). He presented Council with a petition containing 1,800 people

who oppose the Ellington project (Neighborhood Exhibit 8). Since City Council has authorized a Master Plan for Downtown, he felt that Council should wait until that Master Plan is finished before considering this project. In addition, he felt consideration of the project should not be given until after the new Planning Director is hired who may have his/her own vision bringing a wealth of experience. He said that even though the developer had an overall height reduction of 31 feet, it's still almost equivalent to two vertical Wal-Marts on a 1/2 acre lot. He said the same problems remain of parking, sidewalks, no change on the Biltmore Avenue curb cut, and the curb cut is risky for pedestrians. In addition, he said there was not enough water pressure to go up into the Ellington, since the BB&T Building can't get water pressure over 8 stories. Regarding sustainability, he questioned whether they would complete the "green" list items since the City has no enforcement power. He urged Council to deny the conditional use permit and see if they come back with a better project after the Downtown Master Plan is adopted.

City Attorney Oast said that he did not advise Council that they would not have the ability to enforce conditions on the conditional use permit, if issued.

City Attorney Oast also said that under North Carolina law, the petitions have very limited evidentiary value and advised Council not to base any critical findings of fact on these petitions.

The following individuals spoke in opposition of the conditional use permit, for various reasons, some being, but are not limited to: loss of sunlight and views to adjoining residences, thus resulting in a decrease of property values; request for a supplemental traffic study on the Grove Park/Sunset Mountain neighborhood; regarding the laundry facility, what are the truck routes, how many trucks will be involved, will there be a need to enlarge the Grove Park Inn's facilities, will the enlargement of the laundry facilities create additional noise, and is the Grove Park Inn zoned to take in laundry from other facilities off site; scale and size of the building is too large for the site; building is not smart growth; construction will result in 3-6 years of traffic gridlock on Biltmore Avenue; using the BB&T Building and their garage across the street is not a good comparison; and building is too high:

Mr. Jessie Junior
Ms. Lori Ritter, resident of 52 Biltmore Avenue
Ms. Grace Curry, President of the Grove Park/Sunset Mountain Neighborhood Association
Mr. Bill Wescott, professional engineer and developer
Mr. Bill Maloney, Asheville downtown business owner

The following individuals spoke in support of the conditional use permit:

Mr. Marvin Chambers, Chair Elect of the Eagle-Market Streets Development Corporation (Neighborhood Exhibit 9)
Mr. Jim Kammann, resident and business owner in Asheville (read an e-mail on behalf of the 60 members (31 of which are in downtown Asheville) and the Board of Directors of the Asheville Independent Restaurant Association)
Ms. Tracy Adler, owner of Café on the Square
Mr. Fred A. Martin, Vice-President of the Mast General Store Inc. (Neighborhood Exhibit 10)
Mr. Joe Eblen, representing Eblen Charities
Asheville citizen

Mayor Bellamy closed the public hearing at 8:00 p.m.

Councilwoman Cape said that this is not a one-sided picture and it contains a lot of emotions. She has tried to look at what we can do in our community to be healthy now and be healthy in generations to come. She uses the model of sustainability as the guiding principles by which she has to assess things. Sustainability is economic, social and environmental health. As

such, this building fits that model. Regarding the LEED certification, the developer is making a commitment to a 50% minimal energy reduction in our community. Buildings coming into our community need to be at least be 50% less energy users. The social aspects of housing, the developer is making a big symbolic building, but she feels like as she has weighted the issues they are moving in a direction that says they want to do things in a sustainable way. One block is not relevant - we have to look at the whole community and if you look at the whole downtown as a neighborhood, this building fits in.

Councilwoman Cape moved to approve the proposed master plan (alternative structure which will reduce the height of the Ellington by 31 feet and eliminate 2 floors) subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting will comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (3) The building design, construction materials, and orientation on site will comply with the conceptual site plan and building elevations presented with this application. Deviations from these plans may result in reconsideration of the project by the reviewing boards; (4) This project will undergo final review by the TRC prior to issuance of any required permits; (5) Aston Street sidewalk modified as proposed; (6) Rear or front accesses to nearby businesses will not be disrupted; the developer will coordinate with City and project ombudsman when large loads may block entrances or exits for a nominal period of time. Adequate signage will be provided; (7) The project will be LEED eligible providing 36 items for LEED certification. LEED certification can only be applied for after the building is open and all systems are operational; (8) The Arts Program will be implemented as outlined in the proposal with art shadow boxes provided along Aston Street and Lexington Avenue; (9) The Affordable Housing Program will be coordinated with the Community Foundation of Western North Carolina as proposed in earlier materials; (10) Lexington Street will be used to deliver building materials with staging occurring on the lot located at 86 S. Lexington Avenue in order to keep construction traffic off of Biltmore Avenue; (11) A detailed stormwater plan will be in place for final TRC review; (12) A website will be created to keep the neighbors informed of the project as it progresses noting closures and other construction related information; (13) Shuttle service will operate using alternative fuel vehicles and be limited to 8:00 a.m. - Midnight; (14) An ombudsman will be hired to manage community comments, manage the schedule for nearby neighbors, and also provide an interface for people affected by the development during the construction phases and staging of equipment and materials for the project; (15) Left-turns from Biltmore Avenue into the hotel entrance will be day or time restricted as required by City Council with signage if required and consistent with directional materials provided by the hotel; (16) Biltmore Avenue will not be used for the staging for the project; (17) Utility poles in the vicinity of the project will be placed underground; (18) The building penthouse lantern will be dimmed during the September and October song bird migration and again during the April and May migration periods; (19) The development will participate in the NC Green Power Program to develop renewable source energy at the 'champion level' of support'; (20) The project will participate in the 'Green Plan for Hotels' program administered by the NC Division of Pollution Prevention and Environmental Assistance; and (21) Other items will be included in the project as noted in earlier submitted materials such as a retail space along Aston, café space along Biltmore, shared laundry facilities off site, quality building materials as noted on drawings. This motion was seconded by Councilman Davis.

When Councilman Davis asked about the water pressure, availability, etc., Mr. Glines said that the Water Resources Department has representatives on the TRC and they did not offer any concerns regarding those items.

In response to Councilman Davis, Mr. Bob Kuykendall explained that the construction parking is off-site at 86 S. Lexington Avenue and the construction office is at 34 S. Lexington Avenue.

Councilman Mumpower felt that when you look at the symmetry, power and impact of the original design over the alternative design, we have lost something. He asked if Council would be willing to re-consider the original design.

Councilman Davis personally liked the original design and withdrew his second. At this time, Vice-Mayor Jones seconded Councilwoman Cape's motion.

Councilman Newman was concerned of the overall mass of the building and even though the height was reduced in the alternate design, the mass was kept in the same proportions. He felt that the other proportions were being reduced as well, it would have been a better project. That said, he supported the original design.

City Traffic Engineer Ken Putnam responded to various questions from Councilman Freeborn regarding the traffic study and how the project, shuttle service and laundry facility would impact the service level on Macon Avenue. In addition, he responded to questions related to pedestrian safety as a result of the curb-cut on Biltmore Avenue.

Councilwoman Cape amended condition no. 15 to read "no left turns off Biltmore Avenue into the Ellington." Vice-Mayor Jones agreed with that amendment. She did, however, also prefer the original design.

In response to Vice-Mayor Jones, Ms. Karen Tessier, with the Ellington Public Relations, said that the following parts of the Ellington will be open to the public: the sidewalk café at the front of the hotel on Biltmore Avenue; the 9th floor restaurant and terrace bar; and areas on the 2nd floor for meeting rooms. She encouraged the public to enjoy the Ellington.

Councilwoman Cape amended her original motion to approve the proposed master plan with the original design presented on September 11, 2007, subject to the conditions outlined above in her original motion except condition no. 15 is to read: "no left turns off Biltmore Avenue into the Ellington." Vice-Mayor Jones withdrew her second. At this time, Councilman Mumpower seconded Councilwoman Cape's amended motion.

In response to Vice-Mayor Jones, Ms. Pat Smith of the Community Foundation of Western North Carolina, explained how their plan is to work with the housing organizations in the community about the best way to structure the housing fund and how the fund will operate. She said that the City's Community Development Director will be included in that dialogue.

In response to Councilman Newman, City Attorney Oast felt that City Council has given staff enough guidance to work with the applicant to construct a condition regarding the migratory song bird plan, which meets the intent of City Council.

Councilman Mumpower was dismayed to see Council getting into detailed regulation of the building on behalf of the migratory birds.

At 8:30 p.m., Mayor Bellamy called the question as there had been 20 minutes of Council discussion.

The amended motion made by Councilwoman Cape and seconded by Councilman Mumpower to approve the proposed master plan with the original design presented on September 11, 2007, subject to the conditions outlined above by City staff, with the exception that condition no. 15 read: "no left turns off Biltmore Avenue into the Ellington", carried on a 6-1 vote, with Councilman Freeborn voting "no."

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At 8:30 p.m., Mayor Bellamy announced a short recess.

V. UNFINISHED BUSINESS:

VI. NEW BUSINESS:

A. APPROVAL OF A SHORT LIST OF PRE-QUALIFIED DEVELOPERS TO BE INVITED TO SUBMIT A PROPOSAL FOR DOWNTOWN REDEVELOPMENT OPPORTUNITIES

Mr. Matt Taylor from Real Estate Research, reviewed the RFQ-RFP process to date. He explained the RFQ-RFP process to date.

He said that today we want to focus on (1) discussion of potential RFP criteria, and (2) pre-qualified list of developers.

Using a PowerPoint presentation, he reviewed the potential RFP criteria: (1) land use(s) - (type, intensity/density); (2) community (public art, transportation-oriented, public space, local/minority participation, sustainable design); (3) economic (tax base, housing product, new jobs; and (4) timing of development (immediate/near term, conditioned on relocated activities).

The Park Maintenance properties are as follows:

Acreage is 3.61 acres.
Land Use - mixed use - multifamily residential with street level commercial, density compatible with surrounding development
Community - develop consistent with the WECAN and Clingman Forest Master Plans, sustainable design
Economic - 100% workforce housing, city incentive(s) required, potential future opportunity to partner with Housing Authority
Timing - requires relocation of maintenance operations

The Eagle-Market Street property is as follows:

Acreage is .31 acres (potential for additional acreage with adjacent private lands).
Land use - mixed use - multifamily residential with street level commercial, intensified use of site
Community - preservation of historic façade(s), local business participation, sustainable development
Economic - Market rate with limited workforce housing, EMSDC equity position for social enterprise, create community jobs through commercial space
Timing - immediate implementation.

The Haywood Street Properties at Civic Center:

Acreage is .77 acres
Land use - Consistency with future Downtown Master Plan, more intense use of site, likely commercial and hospitality uses
Community - structured public parking, public space, public art, potential for limited civic center improvements, sustainable design, demonstrated Asheville awareness and context
Economic - economic development, enhance tax base, job creation
Timing - immediate implementation

He explained the developer pre-qualification process which included: (1) evaluation committee; and (2) evaluation criteria (a) development team's profile and capabilities; (b) local

depth of resources; (c) relevant development experience; (d) public-private partnership experience; (e) Asheville experience; and (f) references.

Market opportunities and constraints consisted of (1) moderate, stable growth market; (2) small- to mid-scale projects; and (3) limited land available in the Central Business District. The developer statements of qualifications received are consistent with market outlook.

The following is the recommended list of pre-qualified developers (in alphabetical order):

Citiline Resortline (Charlotte)
Conrad Properties (St. Louis, MO)
Faison & Associates (Charlotte)
Hulsing Development Team (Asheville)
Intown Revitalization Group (Asheville)
McKibbon Hotel Group Inc. (Gainesville, GA)
Mountain Housing Opportunities Inc. (Asheville)
Public Interest Projects Inc. (Asheville)
RCG LLC and Glazer Architecture (Asheville)
Windsor/Aughtry Company Inc. (Greenville, SC)

The next steps in the RFQ-RFP process include: (1) pre-proposal meeting for qualified developers (November); (2) RFP's issued (November); (3) evaluate proposals and select developer(s) (March 2008); and (4) negotiate developer agreement(s) (Summer of 2008).

The requested action is for approval of pre-qualified developer list. An upcoming November action request will be approval of RFP's for distribution to pre-qualified developers.

From Staff Report: "Since City Council's direction in March to proceed with development of a Request for Qualifications (RFQ) for downtown sites, many activities have been completed. Numerous stakeholder meetings were conducted. The project manager conducted a market overview of the Asheville area to determine the best recommended approach for the sites, reflecting the market opportunities and constraints. An RFQ process was conducted, and expanded to include adjacent property owners. City Council held a special work session on site specific goals and corresponding uses. A public information open house was conducted in order to help provide information to the public and interested parties.

"An evaluation committee comprised of city staff with experience in relevant disciplines has reviewed the Statements of Qualifications (SOQ) submitted by 15 developers. The evaluation criteria used to review each SOQ consisted of ranking the development team's profile and capabilities, local depth of resources, relevant development experience, public-private partnership experience, Asheville experience, and references. The evaluation committee also reviewed the SOQs to affirm that those received are consistent with the market outlook: moderate, stable growth market, and small to mid-scale projects.

"Based on the evaluations, the recommended list of pre-qualifled developers to be invited to submit a Proposal for the three Downtown Sites is as follows (in alphabetical order):

Park Maintenance Properties

- Citiline Resortline (Charlotte)
- Conrad Properties Corporation (St. Louis, MO)
- Faison & Associates (Charlotte)
- Hulsing Development Team (Asheville)
- Intown Revitalization Group (Asheville)
- Mountain Housing Opportunities, Inc. (Asheville)
- Windsor/Aughtry Company, Inc. (Greenville, SC)

Eagle-Market Street Property

- Citiline Resortline (Charlotte)
- Conrad Properties Corporation (St. Louis, MO)
- Intown Revitalization Group (Asheville)
- Windsor/Aughtry Company, Inc. (Greenville, SC)

Haywood Street Properties at Civic Center

- Citiline Resortline (Charlotte)
- Conrad Properties Corporation (St. Louis, MO)
- Falson & Associates (Charlotte)
- Hulsing Development Team (Asheville)
- Intown Revitalization Group (Asheville)
- McKibbon Hotel Group, Inc. (Gainesville, GA)
- Public Interest Projects, Inc. (Asheville)
- RCG LLC and Glazer Architecture (Asheville)
- Windsor/Aughtry Company, Inc. (Greenville, SC)

Pros:

1. All teams recommended have experience in projects of appropriate scale and consistent with the market outlook.

2. Outlined developers have experience to do a project that meets public goals established by City Council.

3. Market appears ready and interested in the recommended sites.

4. Selection allows project timetable to proceed consistent with that outlined to developers.

5. The overall process which includes potential future phases for more downtown sites creates the potential for additional developers in the future.

Con:

1. Individual developers have unique qualifications and some teams will not be invited to continue in this phase of the project.

"Staff recommends that City Council approve the short list of developers to be invited to submit a Proposal on the downtown properties."

Vice-Mayor Jones moved to approve the pre-qualified developer list. This motion was seconded by Councilwoman Cape.

Mr. Darryl Hart, Chairman of the Eagle-Market Streets Development Corporation, wanted to keep some of the character in the area along with some mixed use and residential, including incubation of potential businesses. He hoped we can move forward as quickly as we can.

Mr. Gene Ellison, one of the property owners at 42-44 Market Street, urged Council to put something in writing to make sure that the private property the City is interested in preserving will be available.

In response to Councilwoman Cape, City Manager Jackson explained how this process lines up with the Downtown Master Plan process and Mr. Taylor also explained that the developers will be able to have input in the process as well.

Councilwoman Cape said that some initiatives she would like to see in the RFPs would be some incentives for affordable retail (incubator retail for those smaller spaces) and sustainable initiatives, e.g., green, LEED certification, Healthy Built Homes, etc.

Regarding job creation, Vice-Mayor Jones asked if we could get an understanding of the use. For example, if it is hospitality, what jobs will be created, what are the salary ranges, what are the benefits, etc.

Mayor Bellamy suggested Mr. Taylor revise his drawings of the Eagle-Market Street properties to reflect the actual .31 acres, and not include the adjacent private lands.

Upon inquiry of Councilman Newman, Mr. Taylor said that 9 of the 10 pre-qualified teams had an interest in the Haywood Street properties. He said the primary interest expressed was for hotel development in 6 of the 9 pre-qualified terms.

City Manager Jackson said that City Attorney Oast will brief Council in a near future closed session about real estate opportunities on these properties. He said that Mr. Taylor and the development team will develop the RFP's with Council's input from tonight. Staff will distribute to Council a draft of the RFP's and schedule the closed session before we issue the RFP's.

Councilman Newman was pleased to see that we are in dialogue with the Housing Authority on the park maintenance properties.

Councilman Mumpower made a substantive motion to vote on the properties separately. Said motion died for a lack of a second.

The motion made by Vice-Mayor Jones and seconded by Councilwoman Cape to approve the pre-qualified developer list carried on a 6-1 vote, with Councilman Mumpower voting "no."

B. CONSIDERATION OF AN APPOINTMENT TO THE AMERICANS WITH DISABILITIES ACT COMPLIANCE COMMITTEE

Vice-Mayor Jones, Chair of the Boards & Commissions Committee, said that the terms of Sherry Fitzpatrick (disabled community representative) and Mary Robertson (disabled community) expired on August 22, 2007.

On August 28, 2007, it was the consensus of City Council to appoint William Madison (disabled community representative) to serve a three year term, term to expire August 22, 2010, or until his successor has been appointed.

It was the consensus of Council to instruct the City Clerk to arrange interviews with Kelly Rowe Rodriguez and Thomas Marshall Redding for the disabled community position.

C. CONSIDERATION OF APPOINTMENTS TO THE FILM COMMISSION

Vice-Mayor Jones, Chair of the Boards & Commissions Committee, said that the terms of Councilwoman Cape, Mary Trimarco, Diane Linden, D Smith, Lee Nesbitt, Stephen Lutz and Melinda Raines (who resigned), expires on November 1, 2007. In addition, there currently exists two other vacancies (Robbie Williams and Michael Rangel) whose terms expired November 1, 2006.

The Film Commission recommends City Council amend the composition of the Film Commission deleting two positions (the two vacancies of Robbie Williams and Michael Rangel). Vice-Mayor Jones said that we will formalize that in the future.

In addition, the Film Commission recommends reappointment of Councilwoman Cape, Mary Trimarco, Diane Linden and D Smith. Ms. Nesbitt is not eligible for reappointment and Mr. Lutz is not interested in reappointment.

Mayor Bellamy moved to reappoint Councilwoman Cape, Mary Trimarco, Diane Linden and D Smith to each serve an additional three-year term respectively, terms to expire November 1, 2010, or until their successors have been appointed. This motion was seconded by Councilman Mumpower and carried unanimously.

It was the consensus of Council to instruct the City Clerk to arrange the following interviews for three vacancies on the Film Commission: Nancy Sokolove, Adam Brantley Hobbs and Sandra Holden.

D. RESOLUTION NO. 07-186 - RESOLUTION APPOINTING A MEMBER TO THE BUNCOMBE COUNTY TOURISM DEVELOPMENT AUTHORITY

Vice-Mayor Jones, Chair of the Boards & Commissions Committee, said that the term of Ron Storto (representing the owner or operator of a hotel, motel or other taxable tourist accommodation with 100 or fewer rental units) expired on August 30, 2007.

On August 21, 2007, City Council instructed the City Clerk to arrange interviews for Mr. Storto and Rupa Russell. Ms. Russell had withdrawn from consideration and Council re-advertised.

Councilman Mumpower moved to reappoint Ron Storto as a member of the Buncombe County Tourism Development Authority (representing the owner or operator of a hotel, motel or other taxable tourist accommodation with 100 or fewer rental units) to serve a three-year term, term to expire August 30, 2010, or until his successor has been appointed. This motion was seconded by Mayor Bellamy and carried unanimously.

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VII. OTHER BUSINESS:

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Barry Durand urged Council to investigate the contamination site at the top of Mills Gap Road, as it contaminating downstream rivers. Mayor Bellamy asked City Attorney Oast to meet with Mr. Durand to see what the City of Asheville can do, since it is outside the City limits.

After a short discussion which was initiated by Mr. Joe Minicozzi, who noted that the 45 day deadline for Greenlife to proceed with conceptual plans has passed, City Manager Jackson said that staff has been in contact with Mr. Swann today and they have been assured that the submittal is being prepared in earnest and will be submitted very soon. He will follow-up with Mr. Swann and prepare a staff report for Council's November 13, 2007, meeting.

Mr. Mike Fryar spoke about (1) the number of Asheville police officers and their inadequate pay compared to other cities, e.g., Charlotte; (2) the Staples sign; and (3) the Asheville Transit ridership.

Ms. Juanita Owens, former security guard at the Grove Arcade, alleged "toxic and unethical behavior" of the management team at the Grove Arcade. At the request of Mayor Bellamy, City Attorney Oast said that he would brief Council on their rights as the land owner. When Councilman Freeborn suggested that since the City has staff on the Grove Arcade Board

that we ask for a report from them regarding this issue, City Attorney Oast said that he would address that in his report to Council as well.

Mr. Jake Quinn urged Council to recruit and appoint individuals to the Tourism Development Authority who are willing to help re-orient the Tourism Development Authority to better help our community, such as making changes to allow the hotel/motel tax go for infrastructure. Mayor Bellamy noted that we too would like to see the hotel/motel money used in different ways. Councilwoman Cape said that Asheville has many boards and Council relies on citizens to help recruit people.

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 9:47 p.m.

Keisha Lipe
CITY CLERK

Terry M Bellamy
MAYOR

Tuesday – October 23, 2007 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Keisha Lipe

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Freeborn gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING OCTOBER 31, 2007, AS "JANET 'WONDERWOMAN' RHODES DAY"

Mayor Bellamy read the proclamation proclaiming October 31, 2007, as "Janet 'Wonderwoman' Rhodes Day" in the City of Asheville. She presented the proclamation to Ms. Rhodes who is retiring from the City of Asheville after working 25 years, most of which was in the General Administration Department of the City.

II. CONSENT AGENDA:

At the request of Councilman Mumpower, Consent Agenda items "B", "F", "G" and "H" were removed from the Consent Agenda for individual votes.

A. APPROVAL OF THE MINUTES OF THE SPECIAL MEETING HELD ON OCTOBER 3, 2007, AND THE REGULAR MEETING HELD ON OCTOBER 16, 2007

B. RESOLUTION AUTHORIZING THE EXECUTION OF ANY AND ALL DOCUMENTS TO REGISTER A TRADEMARK WITH THE UNITED STATES PATENT AND TRADEMARK OFFICE FOR "THE ASHEVILLE PROJECT"

This item was removed from the Consent Agenda for an individual vote.

C. RESOLUTION NO. 07-188 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A MUNICIPAL AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR THE INSPECTION OF BRIDGES ON THE MUNICIPAL STREET SYSTEM

Summary: The consideration of a resolution authorizing the Mayor to execute a Municipal Agreement with the N.C. Dept. of Transportation (NCDOT) for the inspection of bridges on the municipal street system.

In 1983 the Federal Highway Administration developed the Federal Off-System Bridge Replacement Program. The program is funded 80% through federal funds and 20% through City

funds and administered by the NCDOT. To remain eligible for replacement funds and avoid penalties, it is required that all public bridges are inspected every two years. The NCDOT offers three options for meeting the bi-annual inspection requirements:

(1) Do the inspection with City forces;

(2) City to hire a consultant to do the inspections;

(3) City to allow NCDOT to do the inspections through a qualified private engineering firm.

Since 1983 the City has elected to execute an agreement with NCDOT to accomplish the required inspection thorough their personnel or engineering consultants. This process allows high numbers of bridges to be inspected under one contract or operation, and therefore, results in minimum inspection cost per bridge. It is anticipated the inspections cost to be $2,600 per bridge for the upcoming inspections. The City has 30 bridges requiring inspection this year, which bring the cost to $78,000. The City's share of 20% is $15,600. Funds for the City's share are budgeted in the Public Work's Contracted Services budget line.

Pros:

- Lower cost of bridge inspection due to high volume.
- Use of qualified engineering firms through NCDOT.
- Fulfills requirement for bi-yearly bridge inspections.
- Indicates areas for repair for Public Works staff.

Con:

- None identified.

The Public Works Department, Streets Division, recommends City Council authorize the Mayor to execute a Municipal Agreement with the NCDOT for the inspection of bridges on the municipal street system.

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D. RESOLUTION NO. 07-189 - RESOLUTION DIRECTING THE CITY CLERK TO ADVERTISE AN OFFER OF PURCHASE FOR UPSET BIDS REGARDING PROPERTY OFF BAXTER STREET

Summary: The consideration of a resolution directing the City Clerk to advertise an offer of purchase for upset bids regarding property off Baxter Street.

A bid has been received from David Freck in the amount of $1,700 for the purchase of land off Baxter Street.

The land off Baxter Street was acquired by the City as part of the East End/Valley Street Community Improvement Program. It is a rectangular shaped fragment lot comprising 0.02 acre±. It has no access and was intended to be sold to an adjoining property owner. It is zoned RS8, and it is not suitable to build on. The bid from David Freck is in the amount of $1,700. We have in file an appraisal letter prepared by Troy Flack dated May 18, 2007, estimating the market value of the property. Mr. Freck proposes to acquire the subject parcel for assemblage with the property he owns next door.

Pros:

- The sale will be at fair market value as established by the upset bid process.
- It will return property not needed for public use to the tax rolls.
- It will transfer responsibility for maintenance to the private sector.

Con:

- There is no negative impact.

The proceeds from the sale of this parcel will be Community Development Block Grant Program Income.

Economic Development staff recommends City Council approve a resolution directing the City Clerk to advertise an offer of purchase for upset bids regarding property off Baxter Street.

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E. RESOLUTION NO. 07-190 - RESOLUTION ACCEPTING THE BID OF EXTERIOR DIAGNOSTIC SERVICES INC. AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH EXTERIOR DIAGNOSTIC SERVICES INC. FOR RESTORATION REPAIRS TO THE CIVIC CENTER PARKING DECK

Summary: The consideration of a resolution accepting the bid of Exterior Diagnostic Services, Inc. in the amount of $486,280 and authorizing the City Manager to execute an agreement with Exterior Diagnostic Services, Inc. for restoration repairs to the Civic Center Parking Deck.

The City of Asheville owns and operates three parking decks, Civic Center, Rankin Avenue, and Wall Street. The Civic Center deck was built in 1976 and the other two in 1988. Like any structure, these parking decks deteriorate over time.

In 2003 Carl Walker Parking conducted an assessment on the condition of all three facilities. As would be expected they identified numerous conditions that needed repair. It is estimated that the total cost of repairs to the three decks will be approximately $1.5 million with the Civic Center deck, being the largest and oldest, requiring the most repairs. Their assessment was divided into emergency repairs and non-emergency repairs. The emergency repairs were completed in 2005.

Earlier this summer a contract was signed with Carl Walker Inc to act as construction management for the non-emergency repairs to Civic Center Parking Deck. They prepared the construction specification and drawings. Repairs will include repairs to tension cables, patching and sealing holes in the concrete, stairwell repairs, sealing and coating the deck surface, and restriping the parking area. Requests for bids were sent out and the bids were publicly opened on August 31, 2007. Bids ranged from $1,181,260 to $486,280. Exterior Diagnostic Services was the low bidder at $486,280. These funds are budgeted and do not require further budget action.

The advantage of this to the City is by correcting problems in the deck now will prevent more costly repairs later and will extend the useful life of the parking facility.

The disadvantages are that there will be some inconveniences to parking patrons as the work progresses. With proper planning these can be minimized.

City staff recommends City Council approve a resolution accepting the bid of Exterior Diagnostic Services, Inc. in the amount of $486,280 and authorizing the City Manager to execute an agreement with Exterior Diagnostic Services, Inc. for restoration repairs to the Civic Center Deck.

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F. RESOLUTION STATING THE CITY'S INTENT TO ACCEPT GRANT FUNDS FROM THE N.C. DEPT. OF ENVIRONMENTAL AND NATURAL RESOURCES TO IMPLEMENT STREAM RESTORATION ALONG REED CREEK

This item was removed from the Consent Agenda for an individual vote.

G. RESOLUTION STATING THE CITY'S INTENT TO ACCEPT GRANT FUNDS FROM THE N.C. DEPT. OF ENVIRONMENTAL AND NATURAL RESOURCES TO IMPLEMENT A RAIN GARDEN/WATER MANAGEMENT PROJECT AT RICHMOND HILL PARK

This item was removed from the Consent Agenda for an individual vote.

H. BUDGET AMENDMENT TO ESTABLISH A BUDGET FOR THE IMPROVEMENTS TO THE BURTON STREET RECREATION CENTER

This item was removed from the Consent Agenda for an individual vote.

I. ORDINANCE NO. 3544 - BUDGET AMENDMENT TO RECEIVE GRANT FUNDS FROM THE FRIENDS OF THE NATURE CENTER TO SUPPORT GENERAL IMPROVEMENTS TO THE GRAY WOLF HABITAT

Summary: The consideration of a budget amendment in the amount of $6,500 to received grant funds from the Friends of the Nature Center to support general improvements to the gray wolf habitat.

The Friends of the Nature Center is a 501 (c) 3 non-profit organization whose purpose is to act as an advocate for the Western North Carolina Nature Center, and to raise funds to support the programs and enhancements at the Nature Center.

The Friends recently acquired a $6,500 grant from the Earl M. Wilson and Helen K. Jones Trust to support general improvements to the gray wolf habitat, purchase wolf toys and replace the wolves' water bowl.

Pros:

- Make improvements to the gray wolf habitat, purchase toys for the wolves, and replace the water bowl that leaks and no longer adequately supplies water for the wolves.
- Support the overall well being and safety of the gray wolves living at the Nature Center.

Con:

- None

The Parks and Recreation Department recommends City Council approve a budget amendment in the amount of $6,500 to receive grant funds from the Friends of the Nature Center to support improvements to the gray wolf habitat.

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Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Freeborn moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Cape and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

B. RESOLUTION NO. 07-187 - RESOLUTION AUTHORIZING THE EXECUTION OF ANY AND ALL DOCUMENTS TO REGISTER A TRADEMARK WITH THE UNITED STATES PATENT AND TRADEMARK OFFICE FOR "THE ASHEVILLE PROJECT"

Summary: The consideration of a resolution authorizing the Mayor to execute any and all documents to register trademarks with the United States Patent and Trademark Office for "The Asheville Project".

To protect this name and other names unique to the City of Asheville, the City Attorney's Office has recommended that the City register such names with the United States Patent and Trademark Office.

For more than a decade, the City of Asheville has been a pioneer with its Wellness Initiative, providing City employees with a wellness program that has attracted nationwide attention. The program is cost effective and sensitive to the medical problems and concerns of employees by providing proactive evaluation, counseling, monitoring and no cost prescription treatment for diabetes, asthma, high blood pressure, high cholesterol, and depression. The program has been instrumental in successfully intervening in and changing the lives of employees who, without the program, may have waited until a critical incident to seek medical help. In addition, this program has allowed the City to significantly control health care costs. This wellness initiative has been successfully marketed by the City as "The Asheville Project."

Recently, what Asheville is doing with its wellness initiative and the name in particular, "The Asheville Project," was discussed favorably on the floor of the United States Senate. Because of this enormous success and the national recognition, it is important for the City to ensure that those who use its name do so consistent with the standards and requirements of the City.

Pros:

- Allows the City to control uses for the name
- Provides recognition to the City as a pioneer in the health care field

Con:

- Requires monitoring for enforcement

City staff recommend City Council approve a resolution authorizing the Mayor to execute any and all documents to register trademarks with the United States Patent and Trademark Office for "The Asheville Project."

After Councilman Mumpower was concerned about trying to police a whole country, Assistant City Manager Jeff Richardson explained the importance of registering this particular trademark.

Councilman Freeborn moved for the adoption of Resolution No. 07-187. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no".

RESOLUTION BOOK NO. 30 – PAGE 446

F. RESOLUTION NO. 07-191 - RESOLUTION STATING THE CITY'S INTENT TO ACCEPT GRANT FUNDS FROM THE N.C. DEPT. OF ENVIRONMENTAL AND NATURAL RESOURCES TO IMPLEMENT STREAM RESTORATION ALONG REED CREEK

Summary: The consideration of two resolutions stating the City's intent to accept grants from the N.C. Dept. of Environmental and Natural Resources (1) to implement stream restoration along Reed Creek in the amount of $32,000 and (2) to implement a rain garden/water management project at Richmond Hill Park in the amount of $55,000.

Funds are available through the N.C. Dept. of Environmental and Natural Resources, Division of Water Resources to implement water quality projects at Reed Creek Greenway, Phase I and Richmond Hill Park via a partnership North Carolina State University Water Quality Group.

The first grant is $32,000 for stream restoration and storm water wetlands along Reed Creek, a heavily impaired stream, which drains over 600 acres of downtown Asheville. The project will redirect stream flow to decrease stream bank erosion as well as establish a new native plant riparian buffer. The second grant is $55,000 for creating a rain garden at Richmond Hill Park to filter storm water from the existing parking lot. The rain garden is a Low Impact Development (LID) feature that will help return this formerly eight acre forested area of Richmond Hill Park to its predevelopment hydrology.

The Division of Water Resources receives funding from the North Carolina Department of Environmental and Natural Resources. The North Carolina State University Water Quality Group identified and steered the grants towards the City and will be contacted to design the projects, provide construction observation, post construction monitoring and testing and public educational tours of the completed projects.

Each grant requires a match from the City for which in-kind services are acceptable. The in-kind match consist of construction services previously rendered via the Parks and Recreation Department for the grading and paving contracts for the Richmond Hill Park parking area and Reed Creek Greenway, Phase I. Both projects are complete and these water quality projects are enhancements that have been accounted for in the design and construction for each project. The Parks and Recreation Department will manage and oversee all aspects of the projects. The grant requires both projects must be completed by June 2008 and the City expects to meet that deadline.

Pros:

- Projects will strengthen the City of Asheville's commitment to water quality.
- Projects will serve as public examples of the type of LID that the City has endorsed through its ordinances.
- Fulfill the full intention of the Richmond Hill Park master plan.
- Fulfill the full intention of the Reed Creek Greenway master plan.

Con:

- Increases the Parks and Recreation Department's capital projects above the proposed Fiscal Year 2007-08 capital projects.

The Parks and Recreation Department recommends City Council approve two resolutions stating the City's intent to accept grants from the N.C. Dept. of Environmental and Natural Resources (1) to implement stream restoration along Reed Creek in the amount of $32,000 and (2) to implement a rain garden/water management project at Richmond Hill Park in the amount of $55,000.

Councilman Mumpower moved for the adoption of Resolution No. 07-191. This motion was seconded by Vice-Mayor Jones and carried unanimously.

RESOLUTION BOOK NO. 30 – PAGE 450

G. RESOLUTION NO. 07-192 - RESOLUTION STATING THE CITY'S INTENT TO ACCEPT GRANT FUNDS FROM THE N.C. DEPT. OF ENVIRONMENTAL AND NATURAL RESOURCES TO IMPLEMENT A RAIN GARDEN/WATER MANAGEMENT PROJECT AT RICHMOND HILL PARK

Summary: See Consent Agenda "F" above.

Upon inquiry of Councilman Mumpower, Mr. Seth Henler-Voss explained that the rain garden/water management project was part of the original Richmond Hill Park plan.

Councilman Mumpower moved for the adoption of Resolution No. 07-192. This motion was seconded by Vice-Mayor Jones and carried unanimously.

RESOLUTION BOOK NO. 30 – PAGE 452

H. ORDINANCE NO. 3543 - BUDGET AMENDMENT TO ESTABLISH A BUDGET FOR THE IMPROVEMENTS TO THE BURTON STREET RECREATION CENTER

Summary: The consideration of a budget amendment in the amount of $215,000 to establish a budget for the improvements at the Burton Street Recreation Center.

The City of Asheville applied to Community Development Block Grant (CDBG) in January 2007 for a grant to support building improvement cost at the Burton Street Recreation Center. A $155,000 grant was recently awarded and is matched by a $60,000 appropriation from the Fiscal Year 2007-08 general capital improvement budget funding allocation for the Parks and Recreation Department.

Funds will be used to support general improvements to the interior of the building including replace HVAC, improve ADA accessibility, make minor kitchen upgrades, add storage areas and paint the interior of the building. The funds will also be used to replace exterior doors and windows, replace the floors in the weight room, craft room and kitchen, and replace restroom fixtures.

Pros:

- Provide funds to make needed improvements to the interior of the Burton Street Recreation Center to maintain the facility and to support programming needs.
- Fulfill commitment to the Burton Street neighborhood to make improvements to the facility.

Con:

- None

The Parks and Recreation Department recommends City Council approve a budget amendment in the amount of $215,000 to establish a budget for the improvements at the Burton Street Recreation Center.

At the request of Councilman Mumpower, Parks & Recreation Director Roderick Simmons explained what improvements would be made to the Burton Street Center.

Councilman Mumpower felt that neighborhoods are not improved with perfection of facilities. He believed that people make that difference.

Mayor Bellamy said that this came to the Housing & Community Development's level a few months. The neighborhood residents explained how they are taking back their community. One year ago you couldn't walk up the street without someone approaching you to buy drugs. The neighborhood energized themselves and have taken back their community. A lot of the issues they have been plagued with, they are overcoming. They are now requesting some assistance from the City. They have asked for the recreation center to be improved and speed humps on their street. This action will show that City Council has bought into the overall picture of that community and together, we can make that community grow.

Councilman Newman moved for the adoption of Ordinance No. 3543. This motion was seconded by Councilman Freeborn and carried on a 6-1 vote with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 24 - PAGE 231

III. PRESENTATIONS AND REPORTS:

A. GANG SUPPRESSION AND COMMUNITY CENTER SECURITY RECOMMENDATIONS

City Manager Jackson said that this agenda includes a staff presentation to inform Council of the immediate action plan that we are implementing to prevent gang activity and improve recreation center security. He asked for Council's endorsement.

Police Chief Bill Hogan summarized the management plan being implemented. He said the APD presentation on local gang activity has been made to: the Buncombe County Sheriff's Office, Buncombe County Gang Violence Prevention Project, AmeriCorps, West Riverside Operation Weed & Seed, and UNC-Asheville seniors class. The following are presentations scheduled to be made to: TC Roberson PTO, Asheville Housing Authority Board, Asheville High School staff/faculty, and City of Asheville Operating Department.

There is ongoing communication and cooperation on gang-related issues with Dept. of Juvenile Justice, Dept. of Social Services, Dept. of Probation and Parole, Henderson Co. Sheriff's

Dept, Buncombe Co. Sheriff's Office, District Attorney's Office, and Buncombe Co. Gang Violence Prevention Project.

Regarding staffing and training: (1) 3 officers trained in the use of GangNet, a statewide database that aids law enforcement in tracking and validating gang affiliations; and (2) adding 2 APD gang investigator positions. These detectives will track, analyze and manage gang intelligence internally and via GangNet, with a special emphasis on prosecuting gang members under RICO laws.

There is partnership with the Parks & Recreation Department: School Resource Officer Jason Briscoe has been providing after school security at the Reid Center. In the 10 months that Officer Briscoe has been at the center, there has been a 52% reduction in calls for service from the facility. Most of Officer Briscoe's time is now spent on mentoring, rather than on security issues at the center.

Two new Gang Investigator positions will be added at a first year cost of $140,470. The investigators filling these positions would be responsible for tracking, analyzing, and investigating gang members and gang crimes, with an emphasis on prosecuting gang members as part of a continuing criminal enterprise and racketeering organization. They would also help fill a missing educational component, helping guide youth away from gang activity. The County has also agreed to expand its gang-related investigations and an Assistant District Attorney has been assigned to enhance judicial prosecution.

Parks & Recreation Director Roderick explained the security assessment and the short-term improvements: A team of staff members developed short-term security recommendations in these areas: access management, enhanced staff supervision, enhanced police presence, other low-tech investments (examples include making entry/exit points one way, upgrading and updating security systems, etc.)

A team of City employees from the Parks & Recreation, Police and Fire Departments recently convened to develop enhanced security measures for the City's recreation centers. The team developed a set of short-term improvements that fall into four categories:

- Access Management: Parks' staff at the four Gym Centers will implement a sign-in/check-out system that will allow staff to monitor and track the attendees who are using the Centers;
- Enhanced Staff Supervision: The Parks & Recreation Department will add additional part-time staff members, which will allow the Department to provide three staff members at each Gym Center at all times.
- Enhanced Police Presence: Off-duty Police Officers will be added to provide an additional security presence at each of the Gym Centers.
- Low-Tech Security Investments: The City will implement measures to enhance security monitoring at the Gym Centers.

The costs for the enhanced staff supervision and police presence for the remainder of the current year totals $74,400. The annual cost for these enhancements, which will need to be included in next year's budget, will be $128,960. Funding for the technology improvements will come from the $80,000 that Council approved during the budget process for citywide building security enhancements. The access management system can be implemented at no cost. The short-term measures that staff is recommending to Council tonight represent an initial low-cost effort to make immediate security improvements at the Gym Centers.

Regarding the security assessment of the long-term improvements, staff will make recommendations for implementing long-term security improvements through the annual budget process. Examples could include improved security equipment and software, photo ID system,

park patrol program, etc. Staff will continue to evaluate other long-term solutions and report back to Council at a later date on additional security options and the costs for implementing them.

Costs associated with gang prevention and center security will be absorbed via currently budgeted funds for security enhancements and savings in other expenditures.

The Action Plan consists of (1) Add two Gang Investigator positions; (2) Continue community education on gang prevention & intervention; (3) Increase part-time staffing at Community Center gyms; (4) Assign off-duty police personnel to provide additional security at Community Centers; (5) Implement other low-tech security enhancements; and (6) Support and assist community partnerships.

Councilwoman Cape said that we can measure this in terms of sustainability. The measurable components would be "what is the environment and what can we do to fix the environmental situation," and "what is the cultural component?" But, the component we are not addressing is "what other economic options can we offer these kids other than getting involved in crime." She would like more information on that component.

Councilman Freeborn felt this is a good approach for the short term but agreed with Councilwoman Cape on all three components. He felt we need to charge staff with bringing forward in the next budget a more comprehensive after-school job program.

Mayor Bellamy said that there are other community partners who are looking to expand the City of Asheville Youth Leadership Academy Program because it was so successful for the young people who participated. Other partners, like Mission Hospitals, UNC-Asheville and hopefully the Chamber of Commerce and other business leaders, are looking at providing jobs for individuals after school so that the kids not only have an opportunity for something to do, but they also have money. The Housing Authority is also working diligently within their agency which will impact how people hang out. They will need Council support to have the support of the police officers to enforce the rules they would like to put in place. There are a lot of things happening so the goal for the community is not just a police problem, not just a city program, not just a parent problem, but a whole community problem. Another issue is how peer pressure plays a part in this. Not all kids that are in gangs are doing it because they want to sell drugs and commit crimes, but they want someone to love them and the gangs provide that. So, how do we make sure they are loved outside of that - in their homes - and make sure their parents have jobs so they can provide them with things they need to be successful.

Police Chief Hogan responded to various questions/comments from Councilman Mumpower, some being, but are not limited to: what are the differences of the gang problems now than 3 years ago; how much gang activity is related directly or indirectly to drugs; are we talking about formal gangs or groups and associates with common goals; is there any sense where illegal immigrants play in these gang equations; and what percentage of the people who call themselves gang members are "wannabes".

Councilman Mumpower felt we have had a drug thug culture in our community for years. Last year we made a commitment to eliminate the open air drug market and he believed we have backed off that commitment to everybody's detriment. Drugs are at the core of almost everything. As long as we have drug thugs openly dealing on the streets with kids around, with no parent around, or with no community involvement, we can't save those kids, no matter how nice the recreation center is. The explained a program the Drug Commission started which meets every Thursday night to work with the drug dealers to help them get off the street. They helped 7 men get good jobs, but they lost every one of them back to the street. The point is once people get caught up in the drug world, it is extremely hard to get out of it and prevention is the only way to solve the problem. The gangs won't flourish unless the drugs do.

Councilman Freeborn asked that when staff comes back with a more comprehensive approach to the issue, will there be an element to deal with gang related graffiti.

City Manager Jackson said that staff will be providing updates as they become available on the following different initiatives: (1) graffiti abatement pilot program for downtown; (2) expanding job opportunities, internships and training programs through public-private partnerships and with non-profits; (3) working with Housing Authority on the de-concentration of poverty and as their proposals are developed we will report to Council; (4) periodic reports on the success of the high schools and overall education system of dealing with the drop-out rates; (5) developing specific recreational programs to expand our efforts with teenagers and at-risk youth as part of our budget process; (6) social services information; and (7) Ministerial Alliance is developing some ideas for special events, activities and partnerships.

Vice-Mayor Jones shared a brief inspirational story of a prevention effort of a woman who lives in Pisgah View Apartments.

It was the consensus of Council to instruct the City Manager to move forward with the action plan and in the direction outlined.

B. FINANCIAL QUARTERLY REPORT

Chief Financial Officer Ben Durant updated Council on the Water System Revenue Bond issue. They recently made a presentation to the bond rating agencies of Moody's and Standard & Poore, with the hopes of getting an increase in our bond rating. The economic overview is as follows: Asheville's unemployment rates are low below state and national levels; the City's average population growth grew 1.46% from 2003 to 2006; Asheville has the largest per capital retail sales of any city in North Carolina; construction permits demonstrate consistent growth; City assessed valuations exhibit strong growth; and Asheville has enjoyed average annual customer growth of 2.44% from 2003 to 2007.

Highlights since 2005 include: (1) $20 million from operations for maintenance; (2) implemented new asset management system; (3) first utility in the nation to achieve ISO 14001 environmental performance standards, (4) rate increases began; (5) Capital Improvement Plan fee $6.0 million annually year to accelerate funding of needed maintenance; and (6) excess water capacity for future growth of service area.

He showed charts of (1) average usage and peak demand; (2) a comparative rate structure of North Carolina cities monthly rates as of June 30, 2006; and (3) how our financial strength fuels fund balance growth.

They were impressed on how we manage our system and upgraded our bond ratings as follows: Moody's - before A1 and now Aa3; and Standard & Poor - before A+ and now AA-.

Mayor Bellamy thanked Council and staff because when we took the water system over there was a lot of conjecture in the community about our ability to run the system. We are managing our finances much better with transparency. We are running the Water Resources Department as a utility and we are putting money back into the system and making a big difference regarding water quantity and water quality.

When Councilman Newman asked what kind of financial difference a better bond rating would be for Asheville, Mr. Durant explained that there will be lower insurance costs, but would ask the underwriters to provide a more specific answer for Council.

Budget Director Tony McDowell reviewed the current budget, outlining the amendments made to date, for a total budget of $90,584,498.

General Fund revenue highlights include: (1) Property tax revenue will come in slightly over budget. More detailed information from the County in January; and (2) Sales tax will come in slightly under budget: (1) Retail sales are slowing; (2) City's share of County sales tax revenue decreased by 6.1% due to County not lowering its property tax rate as much as the City did following revaluation; (3) Strong construction activity locally is pushing up building permit revenue; (4) Powell Bill revenue exceed budget by $200,000; and (5) Overall, general fund revenues are projected to exceed budget by $586,000.

He reviewed a chart showing the Powell Bill's 10-year history.

General Fund expenditure highlights include: (1) Departments projected to save $495,000 through normal attrition & operating savings; and (2) Expected Fund Balance Usage: $4.7 million.

He showed how the Fund Balance year-end estimate is 20.1%.

He also reviewed the enterprise funds of Water, Civic Center, Transit, Parking, Festivals, Golf and Stormwater.

Throughout discussion, Mr. Durant and Mr. McDowell responded to various questions/comments from Council, some being, but are not limited to (noting that information not available at this meeting will be provided to Council): do we know the total amount of sales tax collected in Buncombe County and the other cities in Buncombe County; regarding water of the cities identified on a chart shown, are those rates for all their customers, or just the municipal customers; and request for an update on the Civic Center roof project.

Vice-Mayor Jones noted that anytime a city lowers the tax rate, they are penalized by how much of the sales tax allocation will come to them.

After a brief discussion initiated by Mayor Bellamy, it was the majority of Council's consensus to ask staff to look at and report back on some best practices about how we can creatively help homeowners when their homes are impacted by stormwater from public infrastructure, possibly with the use of Housing Trust funds or stormwater fund money.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF PROPERTY LOCATED AT 55 PINEY MOUNTAIN DRIVE FROM RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT TO INSTITUTIONAL DISTRICT/CONDITIONAL ZONING FOR THE DEVELOPMENT OF A RETIREMENT RESIDENCE FACILITY

ORDINANCE NO. 3545 - ORDINANCE TO CONDITIONALLY ZONE PROPERTY LOCATED AT 55 PINEY MOUNTAIN DRIVE FROM RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT TO INSTITUTIONAL DISTRICT/CONDITIONAL ZONING FOR THE DEVELOPMENT OF A RETIREMENT RESIDENCE FACILITY

Mayor Bellamy opened the public hearing at 6:18 p.m. and turned over the gavel to Vice-Mayor Jones to preside.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to conditionally zone property located at 55 Piney Mountain Drive from RS-2 Residential Single-

Family Low Density District to Institutional District/Conditional Zoning for the development of a retirement residence facility. This public hearing was advertised on October 12 and 19, 2007.

The subject property, 13.52 acres in size, is located on the edge of the current City of Asheville limits and in the extraterritorial jurisdiction of the City. The property is located at 55 Piney Mountain Road off of Chunns Cove Road, and overlooks I-240 and Tunnel Road to the west. The property was graded in 2004 and 2005 in the anticipation of the development of a church; however, the church was never constructed and the property was placed on the market.

This property is surrounded primarily by property that is zoned RS2, also the current zoning of the property. To the north the zoning is RS2 and Office Business; the Centre Park Office complex is located almost immediately to the north of the site. To the east there are single family homes. The property to the south is the site of a church. Further out Piney Mountain Road, a multi-family development (condominiums) is located. As previously stated, to the west is Piney Mountain Road and I-240.

The petitioners, Curry Architecture and Holiday Development, are requesting that the property be rezoned from RS2 (Residential Single-Family Low Density District) to INSTCZ (Institutional Conditional Zoning District) to allow for the development of a 120-suite retirement residence facility. The suites are not considered dwelling units as they do not have complete kitchens. (There are two complete dwelling units in the facility for the managers). This facility is, therefore, reviewed as an institutional development even though the residents of this facility are self-sufficient. There is no facility-provided medical component. The suites are proposed to be housed in two buildings that total approximately 110,000 square feet in gross floor area. Common areas for socializing and eating are also proposed. The proposed height for the buildings is primarily forty (40) feet. There are some portions of buildings that reach sixty (60) feet in height as measured per our ordinance. There is no maximum height in the Institutional District except when a property is within one hundred (100) feet of a residentially zoned area. In these instances the maximum height is that allowed in the adjacent zone. Staff is recommending that the additional height being shown in the elevation drawings be permitted for two reasons. The first reason is that the additional height shown is largely attributable to the developer's interest in working with the land in grading and the location of buildings. Secondly, the adjacent property (adjacent to the buildings) that is zoned RS2 is a small sliver of property that borders the Centre Park Office Complex. Staff, therefore sees no negative impact for residential development. In addition to the facility structures, there are two garage structures proposed for the eastern portion of the parking area to house six vehicles each.

The developer is proposing to work as much as possible with the existing contours as previously graded and plans to disturb no more than 3.07 acres of a 13.52 acre site. This property is subject to the previous hillside development regulations; the proposed development complies with those regulations. Several new retaining walls are proposed and a number of the previously installed retaining walls are proposed to remain. The developer has submitted a geotechnical analysis with their application.

In an effort to work within the existing contours and with the existing retaining walls, the developer needs Council to grant the height modification detailed above and alternative compliance approval for buffering. The buffering requirements now state that regardless of the use of the property, a property zoned Institutional must provide a 30 foot buffer if located next to a property zoned residentially. Again, due to the existing topography and retaining walls, this becomes a hardship for a developer trying to work with the current contours of the land. The developer has proposed some landscaping to soften the view of the retaining walls and landscaping to shield the buildings as well. A fifteen (15) foot buffer area will contain the plantings. Staff is supportive of both the height modification and the buffering alternative compliance request.

The developer has received commitment approval from both the Asheville Water Resources Department and the Metropolitan Sewerage District. Water Resources is requiring the extension of an existing 8-inch waterline on the west side of Pine Mountain Road to serve the subject property.

The developer held a neighborhood meeting on July 11, 2007, at the Asheville Apostolic Church (located next to the subject property) to review the project and answer questions of property owners and residents.

At a meeting on August 6, 2007, the City of Asheville Technical Review Committee (TRC) reviewed the conditional zoning request and made a positive recommendation (with conditions) that the project be forwarded to the Planning and Zoning Commission. The developer resubmitted since that time, addressing a number of comments.

At a meeting on September 5, 2007, the Asheville Planning and Zoning Commission reviewed this request and unanimously recommended this conditional zoning to the Asheville City Council. This recommendation was with the conditions as set forth in the TRC report, the standard conditions recommended by staff, and with the recommendation that Council grant alternative compliance for buffering and a modification for building height. Staff and the commission also recommend that the project be conditionally rezoned with the condition that the use be limited to a retirement suite facility only and that an "urban level" of service be provided for the development. The Commission also added the requirement that the reflectivity provisions in the new steep slope ordinance be applied to this project.

No one spoke on this matter at the Planning and Zoning Commission except for the development team. There have been no calls in opposition to this project.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in Section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**

   The project, if approved must meet the technical standards set forth in the City's Unified Development Ordinance and Standards and Specifications Manual. All indications are that all standards can be met related to safety issues.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**

   The developer of the site proposes to work as much as possible (both grading and the location and design of buildings) with the existing contours of the land as previously graded. A large portion of the site (10.45 acres) is proposed to remain undisturbed.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**

   The proposed use of the property for a retirement residence facility is very compatible with surrounding residential uses (multi-family and single-family) and the office complex and church uses that abut the land. As previously stated, the use of the property for a retirement residence facility fits in well as a buffer between the highway and single family residential uses and is very compatible with the adjoining institutional and office uses.

The traffic to be generated by this project is limited and mostly off-peak as many of the residents do not have vehicles.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**

The primary proposed height of the buildings in the development does not exceed four (4) stories or forty (40) feet, which is the allowed height of buildings on adjacent properties. While single family residential uses are located up slope from the site of the proposed retirement residence facility, the adjoining office complex is similar in scale and coverage. Even though this use is classified as an institutional use by City standards, it is a residential facility. This project fits well with the character of the surrounding area.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**

The development, as proposed, meets a number of goals set forth in the 2025 Plan for the City of Asheville:

- The plan supports the City's goal of pursuing compatible infill development close to and within the City Limits.
- The design of the development, in accordance with the environmental quality goals of the City, proposes to work primarily within the already graded portions and contours of the site, keeping disturbance of additional area at a minimum.
- Due to the concept of the development, the project cannot be qualified under the definition of "affordability" established by the City; however, it does present a more affordable alternative for retirement living in Asheville.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**

The proposed use is located on a street that is in very close proximity to a major thoroughfare (Tunnel Road) and I-240. The developer has been requested to detail provision of an urban level of service regarding fire and police protection and other services. As part of the project, the developer will extend an 8-inch water line on the west side of Piney Mountain Road to serve the subject property.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**

The City's Traffic Engineer has reviewed the project and indicates no issues with respect to traffic. According to the developer, the proposed use is one that generates little traffic due to the age of the residents and the traffic that is generated is generally off-peak.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pro:

- The plan supports the City's goal of pursuing compatible infill development close to and within the City Limits.
- The design of the development, in accordance with the environmental quality goals of the City, proposes to work primarily within the already graded portions and contours of the site, keeping disturbance of additional area at a minimum.

- The plan provides an appropriate use adjacent to other institutional and office uses and is suitable for a location in such close proximity to I-240.

Con:

- The site is visible from the interstate and some might be concerned with a four-story structure on this property.

At 6:28 p.m., Mayor Bellamy returned to the meeting and Vice-Mayor Jones turned the meeting back over to her.

Mr. Ron Jackson, representing Curry Architecture, said that Holiday Retirement Residence is the number one provider of senior care. Holiday caters to those seniors that desire a slower life pace and a catered life style. Most residents are within the age of 70 to mid-80's and don't drive. The major difference between us and a nursing home is we do not provide any on-staff medical care. Included in the month-to-month lease is 3 meals a day, housekeeping, laundry service, transportation, etc. There are no kitchens or laundry facilities. They tried to place their buildings on as much of the existing on-site grading as possible. He explained the different social environment aspects of the building. They have also provided a walking trail (along with the planned activities inside the buildings), with overemphasis on landscaping. He said that they agree with all the staff recommendations.

Mr. Mark Kurdys, Chair of the Trustees with the First Congregational United Church of Christ, owners of the property, explained how they graded on the property to expand their church, but due to the cost of materials, they were no longer able to complete their dream. He felt that Holiday Development has financial backing and they are committed to senior housing.

Mr. Alan Ditmore, Leicester resident and Treasurer of the Asheville Homeless Network, spoke about the benefit to affordable housing.

Rev. Christopher Chiaronmonte felt it was too easy for developers to come into Asheville and get property rezoned for their particular development.

At 6:43 p.m., Mayor Bellamy closed the public hearing.

Throughout discussion, Ms. Cogburn and Mr. Jackson responded to various questions/comments from Council, some being, but are not limited to: did the Fire Marshal have any concerns with the height modification; how many additional acres will need to be disturbed on the property; what does the existing buffer look like currently vs. the modification; what is the developer proposing to enhance in the buffer area if a modification is granted; what is the staff's rationale for justification of modifying the zoning; can a church be built on RS-2 property; is the company building the suites a for-profit company; and, will sidewalks be constructed or the developer pay a fee in lieu of along Piney Mountain Road.

Councilman Davis felt this is a good use of the land that has already been graded and it will have a better look than if it was developed solely as an RS-2 district. The property contains 13 lots and it could contain many single, individual houses and was unsure how the property was originally zoned RS-2.

Mayor Bellamy asked for a condition that the new retaining wall use the type of materials outlined in the new ordinance, have vegetative screening and a terrace approach.

Councilwoman Cape welcomed conditional use zoning as it allows us to create a better product than the existing base-line zoning.

When Councilwoman Cape asked what the energy commitments were, Mr. Dan Roach, representing Curry Architecture, said that not all of their buildings are LEED certified. He said

that Holiday Development is a large organization and they understand the demands on energy and resources in a community. They are very low on water usage, not generating a lot of traffic and the residents have the ability to control the air conditioning and heating within the suites, thus cutting down the overall heating costs. He said they are not LEED certified in every case, but Holiday Development is looking towards that. Regarding their willingness to be LEED certified, he said that he is not able to make the commitment to be LEED certified because they don't know what the impact will be on the affordability of the retirement residents.

Mayor Bellamy suggested that the developer consider some of the elements of green building for residences in the Healthy Built Homes program. Mr. Roach reiterated that he cannot commit to meeting LEED standards without consulting with representatives from Harvest Development, but they will definitely have discussions with staff at the TRC process. He said that Holiday and Harvest has a significant interest in energy conservation and green construction.

In response to Vice-Mayor Jones, Mr. Jackson said the rental suites will be approximately $1,800/month for a studio and $2,400/month for 2-bedrooms (which includes meals, utilities, transportation, housekeeping, laundry, etc.). However, the prices may be reduced after the 10-mile radius demographics study is completed.

When Councilwoman Cape asked if the project includes any affordable units, Mr. Roach said that they don't have certain units designated as affordable, but none of them couldn't necessarily be geared towards affordability.

Councilwoman Cape said that energy efficiency and affordable housing are concerns we deal with and hoped they would be considered in the planning processes.

Councilman Newman felt it was clear that we need to, through our planning process, make it more clear to people up front how important energy efficiency is to the community and Council. Mayor Bellamy said this will be part of Council's retreat agenda.

Councilman Mumpower felt this is a good project; however, he was uncomfortable with the giant leap from RS-2 zoning to Institutional zoning

Vice-Mayor Jones moved to conditionally zone property located at 55 Piney Mountain Drive from RS-2 Residential Single-Family Low Density District to Institutional District/Conditional Zoning for the development of a retirement residence facility (and find that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation), subject to the conditions and modifications recommended by staff and the Planning & Zoning Commission and the conditions listed as follows: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (3) All existing vegetation that is to be preserved must be clearly indicated on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; (5) This project will undergo final review by the TRC prior to issuance of any required permits; and (6) The new retaining wall use the type of materials outlined in the new ordinance, have vegetative screening and a terrace approach. This motion was seconded by Councilman Davis.

At the suggestion of Mayor Bellamy, it was the consensus of the majority of Council that the applicant be in attendance at Council meetings when their project is being considered. Mayor Bellamy explained that the Council meeting is the place where Council decides what conditions are to be placed on the development and if the applicant is not available, no agreement on the conditions can be reached.

Ms. Cogburn said that representatives from Curry Architecture are willing to postpone the matter until they can get a commitment from the applicant on the green building elements that will be included in the project.

After a brief discussion, Councilman Freeborn moved to postpone action on this matter until November 13, 2007. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

Closed Session

Mayor Bellamy said that during City Council's break, they would conduct a closed session. At 7:31 p.m., Councilman Mumpower moved to go into closed session in order (1) To establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of contracts for the acquisition of real property by purchase, option, exchange or lease. The statutory authorization is contained in G.S. 143-318.11(a)(5); and (2) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations; provided, that any action authorizing the payment of economic development incentives will occur in open session. The statutory authority is contained in G.S. 143-318.11(a)(4). This motion was seconded by Councilman Freeborn and carried unanimously.

At 7:56 p.m., Councilman Mumpower moved to continue the closed session until after the regular meeting. This motion was seconded by Councilman Newman and carried unanimously.

B. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF PROPERTY LOCATED AT 673 SAND HILL DRIVE FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT TO RM-8 RESIDENTIAL MULTI-FAMILY RESIDENTIAL MEDIUM DENSITY DISTRICT/CONDITIONAL ZONING FOR THE DEVELOPMENT OF A MULTI-FAMILY APARTMENT PROJECT

ORDINANCE NO. 3546 - ORDINANCE TO CONDITIONALLY ZONE PROPERTY LOCATED AT 673 SAND HILL DRIVE FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT TO RM-8 RESIDENTIAL MULTI-FAMILY RESIDENTIAL MEDIUM DENSITY DISTRICT/CONDITIONAL ZONING FOR THE DEVELOPMENT OF A MULTI-FAMILY APARTMENT PROJECT

Mayor Bellamy opened the public hearing at 7:58 p.m.

Urban Planner Nathan Pennington said that this is the consideration of an ordinance to conditionally zone property located at 673 Sand Hill Drive from RM-6 Residential Multi-Family Low Density District to RM-8 Residential Multi-Family Medium Density District/Conditional Zoning for the development of a multi-family apartment project. This public hearing was advertised on October 12 and 19, 2007.

Mr. Pennington said the applicant seeks the conditional zoning of 2.66 acres (total project site is 5.95 acres, adjacent parcel of 3.29 acres was previously rezoned in 2004) currently zoned RM-6, to RM-8/CZ for an affordable multi-family residential project with 23 new units. The property is located off of Sand Hill Road within the City's corporate limits.

Multi-family residential with the proposed density is a permitted use in the RM-8 district. This district was created to permit a full range of medium density multi-family housing types along with single-family detached and attached residences. This district is intended to provide a transitional area between high density single-family and multi-family areas, and to permit medium

density multi-family development in areas where existing conditions make higher density development inappropriate. Non-residential development normally required to provide the basic elements of a balanced and attractive residential area is also permitted.

The site slopes gently towards Sand Hill Road from the rear of the property and is currently vacant and wooded. Thirty percent of the site has been designated as open space and tree save area with the majority of this space located along the northern periphery of the site. In addition, the property requires a 20-foot wide Class "B" buffer to the north. The proposed design includes six buildings containing twenty-three rental units, fifteen of which will be two bedroom and eight of which will contain three bedrooms.

The subject property is bounded to the north by a single-family residence and vacant land zoned RS-4, to the east by single family residences and vacant land, to the south by a single-family residence and a church, and to the west by a single-family residence all zoned RM-6.

At their August 20, 2007, meeting, the Technical Review Committee (TRC) approved the project with the conditions listed in the staff report. At the TRC meeting, one individual expressed concern about the extent to which the proposed sidewalk connecting the development to the existing apartment complex would be compliant with ADA accessibility regulations.

At their September 5, 2007, meeting, the Planning and Zoning Commission reviewed the project where concerns regarding stormwater runoff, erosion, light trespass, and inadequate buffering were heard during public comment. There was discussion amongst the Commissioners about these concerns and a motion was made to recommend approval of the proposal with an additional condition that lighting and erosion control be investigated and brought into compliance (if applicable). The motion failed 3-3.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in Section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements once the conditions enumerated by the TRC are met. The project must meet the technical standards set forth in the UDO, the City Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
   The proposed use is compatible with the surrounding natural features and topography. The project must comply with all City standards in regards to grading and erosion control. The applicant is proposing to preserve a significant sloping, wooded area to the rear of the property that adjoins a creek as an open space area. A 20-foot wide Class "B" buffer will be installed that will further buffer the proposed buildings from this area as well.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
   Staff does not expect that the proposed use would have anything more than a minimal impact on neighboring property values.

4. **That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
The requested change in zoning from RM-6 to RM-8 will allow a net increase of six (6) additional units from the seventeen (17) units that the property could support under the density standards of the current RM-6 zoning. The proposed development is consistent with the density of the existing adjacent development that was approved by City Council in 2004. Therefore, the development would be in character and harmony of the neighborhood in which it is located.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
The application of compatible infill growth and affordable housing supports several goals and objectives as described in both ***The Asheville City Development Plan 2025*** *and the* ***Strategic Operating Plan*** *(See* ***Compliance with Comprehensive Plan*** *and* ***Strategic Operating Plan Considerations*** *in above staff report).*

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
The proposed development is located near transportation facilities and other utilities appear adequate. The initial technical review by other technical agencies and utility providers has not revealed any problems for serving the use.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
The proposed project has been reviewed by the City's traffic engineer and is not expected to cause undue traffic congestion or create a traffic hazard.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:

- Provides another opportunity to further the City's goal of compatible infill growth.
- Furthers the City's goal of providing affordable housing.

Cons:

- Some citizens may perceive the rezoning as an effort to increase the allowable density in this area.
- Proposed design is deficient in providing an ADA accessible pedestrian connection to the existing apartment complex. A redesign with coordination of the Building Safety Department could remedy this deficiency.

Staff recommends approval of the proposed project and Conditional Zoning request subject to the conditions in the TRC staff report and those listed by City staff.

Mr. Anthony Willis, owner/developer with Madison properties, said that they have built affordable houses in Asheville and the surrounding area since 1991. They have started building energy efficient homes, while keeping them affordable.

Mr. Gerald Green, representing the developer, said that this project addresses the affordable housing issue in Asheville. They are incorporating energy efficiency, preservation of open space and existing vegetation. This is the third phase of a three phase project and these additional six units will allow the project to be financially feasible for the developer. There have

been no problems identified by the City in the first two phases. In total, with the existing vegetation being preserved and the new landscaped areas and open space, approximately 69% of the total almost 6 acre site will be pervious surfaces. The buffer to the nearest neighbor, Mr. Dula, is approximately 100-120 feet of existing vegetation supplemented by additional plantings. One issue identified was site lighting. The site lighting does comply with the City standards. Erosion control and stormwater management will comply with the existing City regulations. Regarding traffic, the City's Traffic Engineer said the project is not expected to cause any undue traffic congestion. Residents along Sand Hill Road have requested traffic control measures and signals, however, the N.C. Dept. of Transportation traffic count did not warrant those signals. Mr. Green summarized said that benefits of this project is that all units are affordable, there is a large buffer with existing vegetation, there is significant pervious area on the site, the project complies with all City development standards, and the energy usage will be minimal.

Ms. Amy Musser, the developer's energy consultant, said that the developer is not just willing to certify the units with the Energy Star Program, which requires a modest energy efficiency increase over what Code would require, but going further. His goal is 50% of the heating and cooling energy that a typical code-based apartment building would use. The heating/cooling portion of the electrical bill for the units is projected to be about $15/month. He is using the most efficient air source heat pump that we can find in that size range. We have also looked at what his other green features are - energy efficiency has been his primary goal, but we have also talked about low VOC paints, water efficiency, landscaping, etc There are a lot of green features and we are certifying those.

Mr. Ron Dula and his wife Beverly, residents on Hillside Terrace, felt that Mr. Willis did a tremendous job with the other two phases, but was concerned about the management of the units. He opposed the six additional units for several reasons: (1) traffic on Sand Hill Road is astronomical and the entrance to the units is on a dangerous curve so the additional traffic trying to get onto Sand Hill Road will be problematic; (2) the existing project has a turn-around for fire trucks, however, people park in it. He suggested signs be posted; (3) garbage is left outside along with items stored which is an eyesore, noting that he cannot see this from his property; (4) lighting issue, however, we will work with Mr. Willis; and (5) erosion control problems. He did, however, thanked Mr. Willis for building the fence between their properties.

Mr. Alan Ditmore, Leicester resident and Treasurer of the Asheville Homeless Network, explained how he felt that homeowners have a conflict of interest with all affordable housing.

Ms. Franklin, adjoining property owner on Sand Hill Road, spoke against the project in due to the existing traffic on Sand Hill Road.

Mr. Willis said that they do have a full-time manager and have gone above and beyond in trying to be good neighbors. The pictures of the trash are not the standard.

Mayor Bellamy closed the public hearing at 8:20 p.m.

Councilman Davis felt that the property might be better suited to allow the number of homes for the existing RM-6 zoning with an area to be built for the children to play. Mr. Willis responded that the children are encouraged to play in the big flat field next to the church (adjoining their property). Even though it is not on their property, the church welcomes the children.

In response to Councilwoman Cape, Mr. Willis said that their existing homes contain professionals, block masons and retired people.

Councilman Freeborn, member of the Transit Commission, responded to Councilwoman Cape's inquiry about transit projections on Sand Hill Road.

Councilman Mumpower moved for the adoption of Ordinance No. 3546 to conditionally zone property located at 673 Sand Hill Drive from RM-6 Residential Multi-Family Low Density District to RM-8 Residential Multi-Family Medium Density District/Conditional Zoning for the development of a multi-family apartment project, (and find that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation), subject to the recommendations by staff and the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) The applicant must make application for lot recombination within sixty days of zoning permit issuance; (3) An ADA accessible connection acceptable by the Building Safety Department must be provided between the existing apartment complex and the proposed development before zoning permit issuance; (4) A deed restriction must be placed on the property limiting any rental increase to no more than 4% per year for the first 10 years in a form approvable by the City Attorney; (5) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (6) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (7) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans must gain approval through the Planning and Development Department; and (8) This project will undergo final review by the TRC prior to issuance of any required permits. This motion was seconded by Vice-Mayor Jones and carried on a 4-3 vote, with Vice-Mayor Jones, Councilwoman Cape, Councilman Mumpower and Councilman Newman voting "yes" and Mayor Bellamy, Councilman Davis and Councilman Freeborn voting "no."

City Attorney Oast said that because of the vote, this matter will need to come back for a second reading on November 13, 2007.

ORDINANCE BOOK NO. 2H - PAGE 241

C. PUBLIC HEARING TO CONSIDER THE INITIAL ZONING OF 2345 HENDERSONVILLE ROAD TO COMMUNITY BUSINESS II DISTRICT

ORDINANCE NO. 3547 - ORDINANCE ZONING 2345 HENDERSONVILLE ROAD TO COMMUNITY BUSINESS II DISTRICT

Mayor Bellamy opened the public hearing at 8:32 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to initially zone 2345 Hendersonville Road to Community Business II District. This public hearing was advertised on October 12 and 19, 2007.

The City of Asheville has recently completed the voluntary annexation (effective July 31, 2007) of an approximately 1.0 acre tract located at 2345 Hendersonville Road in South Buncombe County. A sports bar/amusement facility is close to completion on the property. This project was permitted by Buncombe County. This parcel was zoned CS (Commercial Service) by Buncombe County.

Properties immediately across Hendersonville Road that are within the corporate limits of the City of Asheville are zoned CBII (Community Business II). Staff proposes, at the request of the property owner, the same zoning for this parcel.

The Technical Review Committee had no issues with the annexation or the zoning classification in this area. At a meeting on September 5, 2007, the Asheville Planning and Zoning Commission unanimously recommended this initial zoning to the Asheville City Council. No one spoke at the meeting on this issue.

Pro:

- Complies with the strategy of identifying appropriate areas for the location of commercial uses. The plan sets forth that these areas should be adequately served by public services, particularly transportation.

Con:

- None noted.

Based on the above information and the analysis provided in this report, staff finds this request to be reasonable. At a meeting on September 5, 2007, the Asheville Planning and Zoning Commission unanimously recommended this initial zoning to the Asheville City Council.

Mayor Bellamy closed the public hearing at 8:33 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3547. This motion was seconded by Vice-Mayor Jones and carried unanimously.

ORDINANCE BOOK NO. 24 - PAGE 246

D. PUBLIC HEARING TO CONSIDER VOLUNTARY ANNEXATION OF NON-CONTIGUOUS PROPERTY LOCATED AT 420 AIRPORT ROAD

ORDINANCE NO. 3548 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE NON-CONTIGUOUS PROPERTY LOCATED AT 420 AIRPORT ROAD

Mayor Bellamy opened the public hearing at 8:33 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to voluntarily annex one lot located at 420 Airport Road. This public hearing was advertised on October 12 and 19, 2007.

William C. Burgin on behalf of Airport Road, LLC has petitioned the City for the annexation of one lot located at 420 Airport Road (PIN 9643.02-75-5760) containing approximately 1.97 acres.

The lot is located on the western side of Airport Road in South Buncombe County near the intersection of Airport Road and Rockwood Road. The area, while adjacent to and near other areas recently annexed as "satellite" annexations or legislative annexations by the City of Asheville, is not contiguous to the primary corporate limits of the City and, therefore, is subject to the standards for annexation of noncontiguous areas contained in N.C. Gen. Stat. sec. 160A-58.1. This parcel and petition meet all applicable requirements of the State of North Carolina.

Pursuant to N. C. Gen. Stat. sec. 160A-58.2 a public hearing must be held prior to adopting any ordinance for voluntary annexation. If City Council decides to proceed with this request, it is proposed that the annexation become effective on October 31, 2007.

Pro:

- Provides for the orderly growth of the City and the tax base through the acceptance of areas into the corporate limits where owners desire annexation.

Con:

- Marginal increase in service costs (too small to measure or respond to).

This action complies with the 2025 Plan in that it supports the strategy of promoting voluntary annexation of developing areas and meeting the goal of continued use of the urban development tool of annexation in providing for the orderly growth of the City.

City staff recommends City Council approve an ordinance extending the corporate limits of the City of Asheville by annexing one lot located at 420 Airport Road.

Mayor Bellamy closed the public hearing at 8:33 p.m.

Mayor Bellamy thanked Mr. Burgin for voluntarily annexing into the City of Asheville.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3548. This motion was seconded by Councilwoman Cape and carried unanimously.

ORDINANCE BOOK NO. 24 - PAGE 248

V. UNFINISHED BUSINESS:

A. ORDINANCE NO. 3549 - BUDGET AMENDMENT REGARDING RE-ENGINEERING OF THE HOMELESS INITIATIVE

From Staff Report: "The consideration of changes to the organizational structure of the Homeless Initiative and a budget amendment in the amount of $50,250 to cover partial year cost of operating the Homeless Initiative as a City program.

This report summarizes the goals, organization, and achievements of the Homeless Initiative, the community effort to implement the Asheville-Buncombe 10-Year Plan to End Homelessness and makes recommendations for some organizational changes to take the Initiative into its third year.

Background

The 10-Year Plan to End Homelessness in Asheville and Buncombe County was developed through a community-driven planning process in 2004 and adopted by City Council and the County Commission in January 2005. The plan aims to drastically reduce the impacts of homelessness by focusing primarily on ending chronic homelessness, defined as persistent or frequent episodes of homelessness in association with a disabling condition such as mental illness or long-term substance abuse.

The Plan moves away from managing and alleviating homelessness towards helping people to exit homelessness altogether by placing them immediately in permanent housing and linking them to needed services: an approach known as Housing First/Housing Plus. The Plan recommended the Affordable Housing Coalition as the lead agency, and the City and County started funding the AHC's coordinating efforts, collectively known as the Homeless Initiative, early in 2006.

Current Structure & Funding

The AHC's initial tasks have been:

- Hiring a homeless coordinator
- Creating a structure to coordinate the efforts of service provider agencies
- Identifying and obtaining additional resources
- Implementing the statewide Homeless Management Information System (HMIS)
- Acting as a liaison to local government
- Providing regular progress reports to the community

The coordinating structure currently consists of three work groups reporting to an Advisory Group of stakeholders. The work groups, drawn from involved agencies and individuals, focus on: Services and Prevention, Housing, and the Homeless Management Information System (HMIS).

The current annual budget for the Initiative is $54,000, derived from a $30,000 City Community Development Block Grant (CDBG) grant, a $20,000 County grant, and additional resources developed by AHC. 80% of the budget is salary and benefits for the homeless coordinator, who has little access to clerical or other support.

The revenue sources for the partial year funding are:

$18,750	CDBG funds
$12,500	Buncombe County
$19,000	City of Asheville General Fund allocation
$50,250	

Results to Date

Achievements of the Homeless Initiative from January 2005 to date include:

- At least 228 homeless people assisted into permanent housing.
- Number of chronically homeless individuals reduced by 38%.
- Research initiated to identify costs and benefits of the Housing First approach.
- Project Homeless Connect – an annual one-day event to link homeless people to the widest possible array of services. The November 2006 event was the first in North Carolina.
- Successful grant application for $600,000 of state funds for housing homeless mentally ill people – one of only three in the state.
- Training for and implementation of the HMIS in four key agencies.
- Training for 35 caseworkers on speeding up access to disability benefits.

Community input collected in June 2007 indicated three key areas of concern: the continuing incidence of homelessness, downtown social issues, and the maintenance and operation of Pritchard Park. Addressing social issues, such as panhandling, and the operation of Pritchard Park were not identified as goals of the Homeless Initiative when the 10 Year Plan to End Homelessness was developed.

Instead, City Council has received reports and recommendations from the Downtown Social Issues Task Force on these and other issues in 2004 and 2007. The Asheville Downtown Association has taken a lead role on some of the Task Force's recommendations, and the Downtown Commission has recently served as the city's liaison for reviewing recommendations. Progress in this area includes:

- Implementation of the Spare Change for Real Change program.
- Opening of downtown public restrooms along with a coordinated effort to publicize the availability of public restrooms.
- Planning for Buncombe County's opening of six wet shelter beds and the Crisis Stabilization Center by the end of 2007.
- Ongoing meetings with district court judges to discuss options for developing a Nuisance/Quality of Life Court.
- Implementation of the Pilot Graffiti Removal Program in January 2008.
- Infrastructure improvements in Pritchard Park to enhance ongoing maintenance.
- Creation of a Park Ranger position for Pritchard Park.
- Ongoing work of the Pritchard Park Task Force to explore options for community programming in the park.

Pros

- Enhances effectiveness of Homeless Initiative by providing greater stability and access to City resources such as Information Services and public outreach efforts.
- Improves liaison with other City departments including the Asheville Police Department, Public Works and the city's affordable housing efforts in the Planning Department.
- Increases effectiveness and accountability of the informal advisory group by making it a City advisory Board with a formal structure and role and Council-appointed membership.

Cons

- Some service providers and potential grantors may be less willing to work with the City than with a non-profit.
- Net annual cost increase of about $26,000.

There is much work still to be done by the Homeless Initiative, including: developing preventive measures, particularly for people exiting institutional care and prison; linking the homeless to mental health and substance abuse services; improving public education and outreach about the Initiative's efforts; enhancing coordination with city departments; and identifying additional resources. In order to pursue these core recommendations of the 10-year plan, the Initiative needs additional support. Staff recommends that:

1. The City of Asheville should become the lead agency for the Homeless Initiative, with the homeless coordinator reporting through the Community Development Director effective November 12, 2007.

2. A VISTA volunteer, or equivalent, should be recruited to assist the homeless coordinator with community education, outreach and participation.

3. The Homeless Initiative Advisory Group should become a properly constituted City Board, encouraging and guiding coordination of homeless services and advising City Council.

The annual budget required for the program would be about $76,000 of which $30,000 could continue to be covered from the CDBG fund. Buncombe County has indicated it will continue to provide $20,000 for the Homeless Initiative as a City of Asheville program in Fiscal Year 2008-2009.

Staff recommends City Council approve a budget amendment in the amount of $50,250 to cover partial year cost of operating the Homeless Initiative as a City program."

Rev. Christopher Chiaronmonte spoke about the need of true affordable housing in Asheville.

Mr. Lance Edwards, Co-Chair of the Homeless Initiative, said that since working with the Homeless Initiative for the last two years, he has seen remarkable growth. The Affordable Housing Coalition has done a wonderful job as the lead entity but reached a capacity limitation on what they can do. The primary focus of the 10-Year Plan is chronic homelessness and the alleviation of that through Housing First. He hoped City Council would take this to the next level as we continue to work to alleviate chronic homeless and to better serve all who are homeless. He supported staff's recommendation for the transition.

Mr. Alan Ditmore, Leicester resident and Treasurer of the Asheville Homeless Network, felt that the Homeless Initiative deserves more.

Throughout discussion, City Manager Jackson and Community Development Director Charlotte Caplan responded to various questions/comments from Council, some being, but are not limited to: how will this structurally work; will the County's interest in this initiative go beyond 2008-08; clarification of the homeless coordinator's job description; have we considered the fact that some foundations do not give grants to governmental entities; are there any internal city conflicts between departments; why doesn't the Affordable Housing Coalition want to continue to be the lead entity; what is the added value of the City running the program opposed to another organization; will the homeless coordinator be just as successful in building community buy-in as a City employee opposed to being a member of the community; are there any cautions of the City getting involved in social services as a direct service provider; what percentage of the 100 people housed are addicts; what percentage of the chronic core homeless group are addicts; and how much of a reduction have we seen in the cost of providing police service, ambulance service and hospital care for the 38% reduction in chronic homeless.

In response to Councilman Mumpower, Mr. Howard Stone, representative from Homeward Bound, said that treatment is not a requirement for housing. The entire premise of the Housing First model is that it is not housing ready, it is housing first. In fact, studies from across the country have shown that when you take addicts and put them into housing, with the necessary supportive services that follow, there is a great receptivity to receiving treatment. Those that we are housing under the grant from the State need not be clean and sober in order to be housed. We are tracking very carefully to see if they are getting clean.

Councilman Mumpower doesn't question the motives of the people involved; however, he does question the method, the research and the theories that are used to support it. He has no faith in government uplifting people and all we have to do is go to public housing and understand why the equation is great in theory but not in practice. He questioned the 38% reduction of chronically homeless individuals and was curious how that figure was arrived at. The basic premise of this program that if you give people housing, they get clean. That runs counter to every bit of historical research in the country on addiction.

Vice-Mayor Jones said that there are lot of people at the university who are tracking these very indicators, but they don't have the final numbers. When those numbers come back, she challenged Councilman Mumpower to decide now whether or not he wants to believe them.

Councilman Mumpower said we can't demonstrate any significant impact on investment; however, we can get pin the number of 38% reduction of chronic homeless. He said there seems like there is a selective application of the research or efforts to define the success or failure of the program.

Mayor Bellamy thanked the Affordable Housing Coalition on their leadership for the past 18 months on this issue. The City and County approved the Plan, but the Coalition took the

project on, without any commitment for funding. Since that time, the Coalition has realized it needs more support to do the work. And, after the Coalition's reorganization, they realized this could be better housed somewhere else. Ms. Sawyer, the homeless coordinator, has been doing a fantastic job, without any support. We are holding her accountable without providing enough resources to help her be successful. This is our 10-Year Plan. A lot of the service providers receive dollars through the City of Asheville, through CDBG funds, and by having a City employee at the table brings more accountability. The volunteer committee who is helping the homeless coordinator has committed to remain in place because they want to make sure the Plan continues to move forward. If some members of Council don't like the direction of the Plan, then we need to talk about that.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Mayor Bellamy moved for the adoption of Ordinance No. 3549. This motion was seconded by Councilman Freeborn.

Councilman Davis supported moving the Plan in-house because it gives us more accountability and more credibility.

Councilman Mumpower felt this is a decoy program that will distract us from more meaningful existing efforts to help people.

Councilman Newman doesn't think we are doing enough to hold people accountable who are chronically violating our laws and that is a separate issue that warrants our attention. However, he does support moving ahead with the things we need to be doing as a community.

Vice-Mayor Jones felt that one of the first things that we can ask Ms. Sawyer to do when she becomes a City employee is to research whether this does increase people coming to Asheville. She tends to think that if we work on the enforcement piece that Councilman Newman talked about then the "bright light" attracting homeless people to Asheville won't be as "bright." If that is a concern of the community, then let's measure it.

Mayor Bellamy said that the Secretary of HUD has sent his "homeless guru" to Asheville to look at what we have because they are talking about what we are doing in Asheville all over the country as a model of success. We have built coalitions and partnership that major cities can't even get together. That is amazing. Asheville is making a difference but it's not being appreciated in some aspects. She is excited about the potential of having more accountability and regular updates about the successes, failures and realities we have in addressing homelessness in the community. With a person on staff we can actually get that information on a consistent basis and track that data so our community does know what is going on. As a Council, when there is something that needs to be addressed, we can address it or change the policy direction. Again, she thanked to the volunteers who have committed to come along and to the Affordable Housing Coalition.

At the request of Councilwoman Cape, Mayor Bellamy said that at Council's retreat the issue of Council respect will be discussed.

When Councilman Freeborn called the question and no one objected, Mayor Bellamy called for a vote.

The motion made by Mayor Bellamy and seconded by Councilman Freeborn carried on a 6-1 vote, with Councilman Mumpower voting "no."

At 9:21 p.m., Mayor Bellamy called for a short recess.

VI. NEW BUSINESS:

A. **ORDINANCE NO. 3550 - ORDINANCE DIRECTING THE DIRECTOR OF THE BUILDING SAFETY DEPARTMENT TO DEMOLISH THE BUILDINGS LOCATED AT 1500 TUNNEL ROAD**

ORDINANCE NO. 3551 - BUDGET AMENDMENT TO DEMOLISH THE BUILDINGS LOCATED AT 1500 TUNNEL ROAD

Building Safety Director Robert Griffin said that this is the consideration of an ordinance directing the Director of the Building Safety Department to demolish the buildings located at 1500 Tunnel Road and the associated budget amending in the amount of $353,000.

1500 Tunnel Road is the site of the former "Days Inn Motel", consisting of 3 separate buildings. Prior to its condemnation in 2004 by the Building Safety Department, (BSD), the Property operated as the Mountain View Inn.

The property has a troubled history especially in maintaining communication with the property owner. In 2005, the BSD condemned the buildings as unsafe and ordered the buildings repaired so as to comply with the Building Code. Upon failure to comply with the Order and failure to prosecute an appeal to this Council, this Council dismissed the appeal in March of 2006. The Owner again disappeared between July 2006 and March 2007. During the owner's extended absence, vagrants accessed the Property, removed the plywood boarding, and pilfered sections of the plumbing, electrical, and HVAC systems. Following a hearing in April 2007, the BSD ordered the buildings demolished, which Order the Owner appealed to the Council. This Council heard the Owner's appeal on July 24, 2007, and affirmed the Order of demolition. No further appeals have been taken by the Owner, nor has the Owner demolished the buildings, submitted sealed drawings for renovation of the buildings and there are no approved improvements being undertaken on the property. The BSD assert that the buildings represent a public health and safety hazard, as acknowledged and admitted by the Owner's attorney during the July 24, 2007, hearing before this Council. If allowed to continue to exist, the buildings will continue to remain in violation of the North Carolina Building State Code.

Pro:

- Eliminates frequent calls to police, fire, building and housing staff.
- Eliminates the health and safety hazards to the neighborhood.

Cons:

- Requires the City to fund the cost of demolition
- Requires the initiation of a lawsuit to commence the foreclosure process.

This action complies with City Council Strategic Operating Plan on Partnerships to Improve Critical Services and Infrastructure by providing sufficient, safe, and affordable housing for Asheville residents. As long as places as the present property exist within a City, its most vulnerable residents will always be prey to those who without proper permits, rent out such decrepit lodgings.

The funds to demolish the buildings will come out of the City's fund balance.

Staff recommends that City Council approve an ordinance directing the Director of the Building Safety Department to demolish the buildings located at 1500 Tunnel Road and the associated budget amending in the amount of $353,000.

Mr. Griffin said that on July 24, 2007, on appeal by the owner, City Council instructed City staff to give the owner 45 days within with to begin demolition or renovation. In the last 90 days since July 24, at the beginning we had minimal contact from the owner's representatives but in the past several weeks we have had no contact at all. Today received an e-mail from the owner's attorneys who wrote that his client intends to pull the demolition permit and do the demolition himself. Mr. Griffin said he contacted the architect involved and she advised him that she has had no contact with the owners.

Mr. Alan Ditmore, Leicester resident and Treasurer of the Asheville Homeless Network, felt that the hotel could be made into affordable housing.

In response to Councilman Freeborn, Assistant City Attorney Martha McGlohon said that upon demolition, the City will file a demolition lien for the cost of the demolition. If the owner fails to pay the entirety of the demolition lien in 30 days, the City will file a lawsuit to foreclose the property.

In response to Councilman Newman, Ms. McGlohon said that the tax value of the property is close to $2 Million and the property owner has received an offer of $4 Million.

Vice-Mayor Jones was disturbed about the number of staff hours involved in this matter. She felt that Council should look for ways that we can begin to fine people that don't make an effort to remedy the problems.

Mayor Bellamy said that members of Council have previously received copies of the ordinances and they would not be read.

Councilman Freeborn moved for the adoption of Ordinance No. 3550. This motion was seconded by Councilman Mumpower and carried unanimously.

ORDINANCE BOOK NO. 24 - PAGE 252

Councilman Freeborn moved for the adoption of Ordinance No. 3551. This motion was seconded by Councilman Mumpower and carried unanimously.

ORDINANCE BOOK NO. 24 - PAGE 254

B. RESOLUTION NO. 07-193 - RESOLUTION AMENDING THE CITY'S 2007 CONSOLIDATED ACTION PLAN TO PROVIDE ADDITIONAL COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS TO HOMEWARD BOUND INC.

Community Development Director Charlotte Caplan said that this is the consideration of a resolution to amend the City's 2007 Consolidated Action Plan to provide additional Community Development Block Grant (CDBG) funds in the amount of $28,000 to Homeward Bound, Inc.

Homeward Bound's A-Hope day shelter was previously open seven days a week from 7:00 am until 12:00 noon, but has recently extended its hours of operation until 4:00 pm every day. Full day operation began the first week of September at an estimated additional cost of $52,000 for the period September 2007 through June 2008. The agency has requested additional CDBG funding in the amount of $28,000 to cover part of this cost.

As other funds are available, Homeward Bound will also phase in enhanced services, including: nurse/triage services to reduce the use of hospital emergency rooms; substance abuse counseling; literacy, GED and computer classes; independent living skills classes.

Homeward Bound was allocated $90,000 in CDBG funds for the A-HOPE Day Center in the 2007 Action Plan. The agency also received a CDBG housing services grant of $30,000 and a HOME tenant-based rental assistance grant of $44,076 for its supportive housing program.

$120,000 in CDBG funds was allocated this year for the relocation of the McCormick Heights residents. We now anticipate that the actual expenses of that program will be much lower, leaving at least $28,000 available for re-allocation.

No public hearing is required because the grant increase is not a "substantial change" as defined in HUD regulations. The request has been reviewed by the Housing & Community Development Committee, which recommends approval.

Pros:

- Will provide a place for homeless people to congregate in the afternoons, relieving congestion in downtown parks, business areas, and Pack Library
- Additional opportunities for use of showers and restrooms
- Additional opportunities for service delivery
- Respite from cold weather this winter.

Cons:

- None

Staff recommends City Council approve a resolution to amend the City's 2007 Consolidated Action Plan to provide additional Community Development Block Grant (CDBG) funds in the amount of $28,000 to Homeward Bound, Inc.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Mumpower moved for the adoption of Resolution No. 07-193. This motion was seconded by Councilman Freeborn and carried unanimously.

RESOLUTION BOOK NO. 30 – PAGE 454

C. RESOLUTION NO. 07-194 - RESOLUTION AMENDING THE 2007 CONSOLIDATED ACTION PLAN TO ALLOCATE $128,000 IN HOME FUNDS TO THE HOUSING ASSISTANCE CORPORATION INC. FOR NEW CONSTRUCTION OF HOUSING FOR HOMEOWNERSHIP

ORDINANCE NO. 3552 - BUDGET AMENDMENT TO ALLOCATE HOME FUNDS TO THE HOUSING ASSISTANCE CORPORATION INC.

Community Development Director Charlotte Caplan said that this is the consideration of a resolution amending the 2007 Consolidated Action Plan to allocate $128,000 in HOME funds to the Housing Assistance Corporation, Inc. for new construction of housing for homeownership, and the associated budget amendment in the amount of $47,000.

The Housing Assistance Corporation (HAC) is planning to develop a subdivision of 13-15 new single family homes on a site in Henderson County. The agency was awarded $81,276 of HOME funding in the 2007 Action Plan to develop four homes on unspecified sites in or near Hendersonville, but has since acquired an option on 13 acres in East Flat Rock, known as the "Three Seeds" site. Only part of the site is suitable for development because of a ravine and an area of archeological interest.

HAC has requested an additional $128,000 in HOME funds to be allocated to this project. Funds are available from three different sources:

1. $88,000 originally allocated to HAC for acquisition, rehabilitation, and resale of dilapidated homes (known as the HOWSER program) but not spent because HAC can no longer find suitable properties at an affordable price.
2. $22,000 recaptured from a Buncombe County program, which used $91,000 of 2004 HOME funds to build four homes in Swannanoa. Only three of the homes were sold to income-eligible families, resulting in the recapture of part of the funding.
3. $25,000 recaptured from a Henderson County program, which used $50,000 of 2002 HOME funds to buy land for six homes. Only three homes were built and the remaining lots were sold, resulting in the recapture of half of the funding.

The Asheville Regional Housing Consortium has recommended that the $88,000 in unspent funds and $40,000 of the recaptured funds should be allocated to HAC's single-family new construction program. The remaining $7,000 will be carried forward for allocation in 2008.

No public hearing is required because the funding increase is not a "substantial change" as defined in HUD regulations.

Pros:

- Utilizes available HOME funds
- Supports the production of at least 13 new affordable homes instead of 4
- Increases cost-effectiveness: subsidy reduced from $20,000 to $16,000 per unit
- Will preserve a site of archaeological interest.

Con

- Site is previously undeveloped land (not infill) without sewer access.

Staff recommends City Council approve a resolution amending the 2007 Consolidated Action Plan to allocate $128,000 in HOME funds to the Housing Assistance Corporation, Inc. for new construction of housing for homeownership, and the associated budget amendment in the amount of $47,000.

Mayor Bellamy said that members of Council have previously received copies of the resolution and ordinance and they would not be read.

Councilman Freeborn moved for the adoption of Resolution No. 07-194. This motion was seconded by Vice-Mayor Jones and carried on a 6-1 vote, with Councilman Mumpower voting "no."

Councilman Freeborn moved for the adoption of Ordinance No. 3552. This motion was seconded by Vice-Mayor Jones and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 24 - PAGE 256

D. RESOLUTION NO. 07-195 - RESOLUTION ALLOCATING $120,000 IN HOUSING TRUST FUND LOANS FOR AFFORDABLE HOUSING

Mr. Randy Stallings, Community Development Specialist, said that this is the consideration of a resolution allocating $120,000 in Housing Trust Fund (HTF) loans for affordable housing developments.

The following two HTF applications have been evaluated by the HTF review panel and recommended for approval by the Housing and Community Development Committee at its September 17 meeting. Currently $434,045.00 is available in the HTF.

1. Tim and Wendy Vorst; 13 Hamilton Street; $60,000 HTF loan; 2 units for rent.

Terms: 2% interest, 30 year term

Strengths: The developer has an excellent history with HTF projects, and has consistently provided timely completion of projects and a commitment to affordability. Cost per unit, location and efficient land use are also positive features.

Concerns: The builder does not propose the external monitoring needed to attain Energy Star certification. Rents are affordable to those below 80% of the Area Median Income, but not to those below the 60% level. Long-term affordability beyond the required three years cannot be guaranteed.

2. Peter Nordeen; 13 Fern Street; $60,000 HTF loan; 2 units for rent.

Terms: 2% interest, 30 year term

Strengths: The developer serves as his own contractor on the proposed project, keeping costs per unit exceptionally low. Location, efficient land use, and compatible neighborhood design are positive aspects of the project. Although this is Mr. Nordeen's first HTF application, his prior experience as the general contractor on similar projects is a positive factor.

Concerns: The Pro-Forma as presented does not clearly establish a need for HTF financing. Because of the low development costs, net cash flow would be sufficient to produce a 10% return on investment with conventional financing alone. The developer does not propose the external monitoring needed to obtain Energy Star certification. Long-term affordability cannot be guaranteed beyond the required three years.

Pros:

- Assists with the development of four (4) units of affordable rental housing.
- Provides effective land use through infill development.

Con:

- Reduces available HTF funds to $314,045, limiting the fund's ability to support a major rental development in FY 2008, for example in the next Low Income Housing Tax Credit (LIHTC) competition.

City staff recommends City Council approve a resolution allocating $120,000 in HTF loans for affordable housing developments.

Councilman Mumpower questioned the 30 year term at 2% interest with the City only controlling the affordability for three years. Councilman Newman said that the Housing & Community Development Committee has looked at the question extensively. We would like to have requirements for much longer, but if we require affordability much longer than 3 years, we will have no private sector developers applying.

Mayor Bellamy said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Newman moved for the adoption of Resolution No. 07-195. This motion was seconded by Councilman Freeborn and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 30 – PAGE 456

E. CONSIDERATION OF APPOINTING MEMBERS TO THE AMERICANS WITH DISABILITIES ACT COMPLIANCE COMMITTEE

Vice-Mayor Jones said that the term of Mary Robertson, as a member on the ADA Compliance Committee, expired on August 22, 2007.

On October 16, 2007, City Council instructed the City Clerk to arrange interviews for Ms. Kelly Rowe Rodriguez and Mr. Thomas Marshall Redding.

After Council spoke highly of the candidates, it was the consensus of Council to appoint Ms. Kelly Rowe Rodriguez as a member of the Americans with Disabilities Act Compliance Committee (representing the disabled community) to serve a three-year term, term to expire August 22, 2010, or until her success has been appointed.

Mayor Bellamy instructed the City Clerk to place the resolution on the next Consent Agenda.

F. CONSIDERATION OF APPOINTING MEMBERS TO THE FILM COMMISSION

Vice-Mayor Jones said that the terms of Councilwoman Robin Cape, Ms. Mary Trimarco, Diane Linden, D. Smith, Lee Nesbitt and Stephen Lutz, as members of the Film Commission, will expire on November 1, 2007. There currently exists a vacancy of Ms. Melinda Rains, whose term also expires November 1, 2007.

In addition, there currently exists two vacancies of Ms. Robbie Williams and Mr. Michael Rangel whose terms also expire November 1, 2007. The Film Commission has asked that City Council amend the composition of the Film Commission from 13 members to 11 members, and suggested removing the vacancies of Ms. Williams and Mr. Rangel. Vice-Mayor Jones said that this issue will be considered at a future date.

On October 16, 2007, it was the consensus of City Council to reappoint Councilwoman Cape, Ms. Trimarco, Ms. Diane Linden and Ms. D. Smith to each serve a three-year term respectively, terms to expire November 1, 2010, or until their successors have been appointed.

In addition, on October 16, 2007, City Council instructed the City Clerk to arrange interviews for Ms. Nancy Sokolove, Mr. Adam Brantley Hobbs and Ms. Sandra Holden.

It was the consensus of Council to appoint Adam Brantley Hobbs and Sandra Holden to each serve a three-year term respectively, terms to expire November 1, 2010, or until their successors have been appointed.

Vice-Mayor Jones said that the Boards and Commissions Committee will discuss the remaining vacancy at their next meeting.

Councilwoman Cape applauded the community in offering to serve, but stressed that the applications need to be filled out completely.

Mayor Bellamy instructed the City Clerk to place the resolution on the next Consent Agenda.

VII. OTHER BUSINESS:

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Jesse Junior was disappointed in (1) the time limits allotted developers vs. individuals; and (2) that only one member of Council attended a recent NAACP dinner. Council responded that they received numerous invitations and they must balance their time between their families and their City obligations. Councilman Mumpower noted that he did not receive an invitation.

Mr. Paul VanHeden explained a concern that he has with the new buses in that four of the seats are over the wheel-wells and it's not enough room for a reasonably sized adult person to sit. Mayor Bellamy instructed the City Manager to take note of this concern when new buses are purchased.

Mr. Dwayne Barton suggested the City create a green apprenticeship program for youths and adults and for the City to create incentives for developers to support the program. He also noted that when development in the community occurs, the community would like to be a part of it in terms of jobs and/or training. Mayor Bellamy felt this is an innovation idea and instructed the City Manager to investigate how the City might be involved. Councilwoman Cape noted that A-B Technical Community College is doing a green building program and felt there may be some partnership opportunities.

Mr. Gilian Kearns drew the community's attention to a good brochure from the League of Women's which is a comparison of partisan and non-partisan elections. He said that "Let Asheville Vote" is not endorsing any candidates or working with any political action committees. Their goal is to encourage voters to educate themselves on the upcoming referendum and vote.

Ms. Ann Kadar, representing South Broad Neighborhood Association, spoke about how they are banning their community together against crime in their neighborhood - prostitution and rampant drug dealing. She explained how they are working toward short-term solutions along with long-term goals. She asked City Council's support for additional lighting and trash cans along South French Broad Avenue. Mayor Bellamy thanked Ms. Kadar and the Association for

working with the overall neighborhood. Mayor Bellamy asked the City Manager to see how the City can accommodate these requests and report back to Council.

Mr. Alan Ditmore, Leicester resident and Treasurer of the Asheville Homeless Network, suggested ABC stores not accept cash as a barrier for alcoholics.

Mr. Danny Lack reiterated Mr. Kearns comments relative to partisan vs. non-partisan elections and why "Let Asheville Vote" opposed City Council's action to change to the election process. He, too, mentioned the brochure distributed by the League of Women Voters.

Closed Session

At 10:20 p.m., Vice-Mayor Jones moved to continue their closed session. This motion was seconded by Councilman Newman and carried unanimously.

At 10:40 p.m., Councilman Freeborn moved to come out of closed session. This motion was seconded by Councilman Newman and carried unanimously.

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 10:40 p.m.

Tenisha Lipe
CITY CLERK

Terry Bellamy
MAYOR

Wednesday – November 7, 2007 - 7:30 p.m.
Council Chamber - City Hall Building

Special Meeting

Present: City of Asheville: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower (arrived at 7:51 p.m.); Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and Acting City Clerk Magdalen Burleson

Absent: Councilwoman Robin L. Cape

Mayor Bellamy opened the meeting and said the purpose of this meeting would be to discuss the regional drought, the City's conservation strategy, and other efforts the City is undertaking to address the water shortage locally, as well as potential efforts to assist other governments. We have been working on this issue with staff and we want to make sure that the community is informed about water availability in our community.

Water Resources Director David Hanks presented Council with the following PowerPoint presentation regarding the community water conservation update.

"Conservation Plan – (1) Water Conservation Plan developed for Regional Water Authority – 2004; Brown and Caldwell and Hydrologics Inc.; (2) City Council approved the plan as part of Water Police Ordinance – 2005; (3) Conservation Plan includes the Computerized Drought Model, which looks at (a) historical and current precipitation and lake levels; and (b) North Fork Water Treatment Plant consumption demand; and (4) conservation measures are based on 10-week forecasted lake elevation at North Fork Water Treatment Plant.

Conservation measures consist of three phases: (1) Phase I – Voluntary (a) 20% chance that the projected lake level is 29 feet below full capacity in 10 weeks; and (b) customers are asked to conserve water; (2) Phase II – Mandatory (a) 10% change that the projected lake level is 30 feet below full capacity in 10 weeks; and (b) restricted water use for anything other than essential needs; and (3) Phase III – Surcharges (a) 5% chance that the projected lake level is 31 feet below full capacity in 10 weeks; (b) $1.40 per CCF (1 CCF = 748 gallons) surcharge to encourage conservation; and (c) average monthly residential surcharge rate is $7.00.

Current staff actions include (1) implemented voluntary conservation measures on 10-19-07; (2) water consumption decreased by 1 million gallons per day since voluntary measures. A survey of six water systems in North Carolina saw minimum to no reduction with voluntary measures; (3) monitor North Fork lake level and precipitation daily; (4) run the drought model twice weekly; (5) monitor system consumption daily; (6) increased the flow from Mills River Water Treatment Plant by 1.5 million gallons per day; (7) repair distribution system leaks; (8) Bee Tree Water Treatment Plant upgrades to be completed early 2008; (9) recycle filter backwash water at North Fork Water Treatment Plant (this is water used to wash filters); (10) limited hydrant flushing throughout the system; (11) three media releases; (12) additional information to media (drought model); (13) media interviews; (14) updates on City website; and (15) Asheville Channel spots.

The current water levels and capacities include (1) system-wide capacity: 43.5 million gallons per day; (2) system-wide safe yield: 31.5 million gallons per day; (3) average daily consumption: 21.5 millions gallons per day; (4) current (10-31-07) North Fork lake level: 2580.18 feet – 20.82 feet below full capacity; (5) current Bee Tree lake level – full; and (6) Mills River Water Treatment Plant – unlimited (draws from Mills River and French Broad Rover).

Regarding regional cooperation, (1) currently supply water to City of Hendersonville, Town of Black Mountain, Town of Biltmore Forest, and Woodfin Water & Sewer District; (2) system connection to the Town of Weaverville; (3) City of Hendersonville (a) has connections to

the Town of Saluda, East Flat Rock and Laurel Park; and (b) on-going discussions with the Towns of Tryon and Columbus to establish temporary connections; and (4) wholesale rate: $0.81 per CCF.

Waste reduction partners (1) volunteer engineers, architects and scientists (a) Land of Sky Regional Council; and (b) provide WNC businesses, industries and public facilities with no-cost water audits; (2) promotes environmental excellence and pollution prevention; and (3) conducted a water audit of the Water Resources Department and other City facilities in 2000.

Customers of the Asheville Water System conserve water (1) average residential customers uses 5 CCF's per month; (2) state-wide average is 8 CCF's per month; (3) continue to encourage customers to conserve water; (4) continue conservation education program; and (5) focus on proactive media and customer awareness plan of water conservation efforts.

The engineering firm of Brown and Caldwell was asked to look at future water sources: (1) Mills River Water Treatment Plant built to be expanded to 4 times current capacity – to over 20 million gallons per day; (2) long term, French Broad River has virtually unlimited capacity; and (3) Bent Creek (off Brevard Road) property as a site for a future water treatment plant.

Regarding the Water Master Plan, (1) engineering firm of Jordan, Jones & Goulding updating master plan with system growth projections over next 30 years; (2) looking at future water consumption demands; and (3) to be completed within the next 90 days."

In Councilwoman Cape's absence, she provided Council with the following information: "I have been thinking a lot about our capacity and future planning: (1) I would like to propose that we look at our growth projections for the city and the existing areas that are projected to grow over the next 50 years. This of course will take in transportation and traffic, MSD's growth boundaries, etc. We can then project reasonable, achievable densities and have the Water staff calculate the projected usage should those densities be achieved. If we also calculate in the projections around drought, etc. I think we will be able to get closer to planning for how development and water distribution can occur reasonably. It is important to do this prior to making any other relationships with other areas. Once those relationships are established on an ongoing basis (not emergency as is the case now) it would be impossible and unethical for us to terminate those relationships; (2) The ideal scenario would be for us to be laying potable and non-potable lines in every water line replacement project we do. I know this seems cost prohibitive at present, but the relationship could exist with MSD to use the treated water they produce as toilet flushing, landscape, etc. and not diminish the supply of treated drinking water for those ends; (3) I would also like us to look into our methods of treating our water, making sure that we are using the most cost effective method at this time; and (4) I would also suggest that we consider a referendum to ask the public about fluoride in the water."

Mr. Hanks, along with City Manager Jackson, responded to various questions/comments from Council, some being, but are not limited to: need to provide graphs for the public to better understand the rationale of the voluntary/mandatory/surcharge conservation measure phases; what are the triggers for the various conservation measure phases; with the Town of Woodfin's limited capacity for long term, are they buying more water from Asheville now; as the Town of Woodfin expands, will we be able to handle their request for additional water; does our drought model take into account the Town of Woodfin's expansion; does the Water Master Plan take into account the potential growth of the new municipalities that would be hooking into our system; with the Sullivan Acts in Raleigh requiring that we cannot deny water, how does that play into growth management as well as capacity; how were the transmission lines at North Fork replaced and was the way the stream flows changed; has the water consumption changed from 12 years ago to now; and do we know what methods of transporting water might be proposed.

Vice-Mayor Jones noted that in terms of conserving water, we have a structure that is problematic in the way we charge our customers - the more water you use, the less it is per gallon.

Mayor Bellamy asked if Asheville has the capacity to truck water out to others or provide the bottling of water. Mr. Hanks responded by saying that internally we don't have tanker trucks. He talked to Fire Chief Grayson about what the capacity of the Asheville Fire Department is, which is very limited. They have one tanker truck that is not in very good condition and it's not a tanker truck that could be used for drinking water. The area volunteer fire departments have some tanker trucks, but they too are not for drinking water. We do have the capacity locally to produce some bottled water, however, the water bottlers in the area are limited and most are very small. The largest capacity here is through Milkco and they can produce gallon containers of water. But, a lot of the tankers that Milkco uses are actually contracted. Some of their water is produced in a plant in Edneyville, but it's a very small plant also. There is really no large producer here. We would have to look at something different if we wanted to do something like that on a large scale. Long term, if Council wants to look at being a provider for the region, we might have to build a facility or partner with a local company to expand their facilities.

Mayor Bellamy was concerned that if the Governor imposes a heavy plan saying that everyone has to conserve (even though our residents are doing a good job of conserving water on a voluntary basis) and since Asheville is considered an ample supply source, she wants to make sure we have a plan in place to sell water to other places. If we are in a situation where we can help the Towns of Tryon and Saluda meet their water needs, she would like for us to take that increase in revenue and put it back into our infrastructure.

Councilman Freeborn asked what if Asheville continues to expand it's wholesale customers (other municipalities), and we get to a point that we can no longer provide water to those customers, who are dependent upon our water system. Mr. Hanks responded that that we have quite a bit of excess capacity. We can, on a short-term basis, produce up to almost 44 million gallons of water a day. Currently we are producing less than half of that. According to our Water Master Plan we would be looking at something in the neighborhood of a 20-30% increase over the next 10-20 years as the growth is not major industry, but residential development. It would take approximately 15-20,000 more houses to be built to see much of an impact in our water capacity.

City Manager Jackson said that in establishing the agreements with wholesale customers, there is some elasticity in the rate that we can charge, which over time is re-negotiable. And, we also set maximum purchases, which a feature that provides for some control. We will continue to be conservative as we enter into those agreements and not over-reach our capacity production in the foreseeable future.

In response to Mayor Bellamy, City Manager Jackson said that within our primary service area of Buncombe County and a part of north Henderson which is covered by agreement, we do need to be mindful of what it costs us to serve those areas which we are required to serve. Mr. Hanks and his staff are preparing, based upon Council's request, an analysis of what is happening in some of those new developments and if we are able to recover our costs as well. We will provide that analysis to Council of what the impact of the Sullivan Acts is with these new developments and whether or not we are able to fully recover our costs. Council will have the option to seek legislative remedies for those situations where we are required to provide services at a losing rate.

In response to Councilman Newman, Mr. Hanks said that no one has contacted the City about providing water and he was not sure what we could do at this point, since we have no tanker trucks. If they have the tanker trucks, however, we can provide the water. He is willing to talk with anyone and if there is a way we can help, we would be willing to do that.

Mayor Bellamy asked if we are in a position to help others, even though other counties have not come to ask for help. She would like for Council policy direction to say we are willing to help others with water, but on our terms. She hoped to have City staff meet with individual communities that need assistance (opposed to a cross the board wide brush from the Governor saying we must). Realistically we can't meet all of WNC's needs, but need to give staff the guidance to negotiate with individual counties and municipalities, while taking into account the current concerns.

Councilman Freeborn said that he didn't wish to sound cold-hearted, but the General Assembly was cold-hearted when they passed Sullivan Acts II and III. He is not interested in providing water to any other county beyond what we currently are doing until Sullivan Acts II and III are repealed by the General Assembly. If the Governor wants us to help the rest of the state, the rest of the state needs to help us.

Councilman Mumpower felt that Asheville is a regional hub and a leader and this is the opportunity for us to demonstrate that. He knows how hard and expensive it is to haul water and if any municipality or organized water system has to go to the expense of trucking water and we have the water capacity to help them, we need to offer that help.

Mayor Bellamy didn't think we should give the water away free because it's not free to the citizens of Asheville or our water users. Even though she doesn't think we should limit our assistance to Henderson County or Buncombe County, our assistance should be based on a true need and our capacity.

Councilman Davis felt that it's good to remain open to helping people, but each case should stand alone.

When Councilman Newman asked how much it would cost to upgrade Bee Tree Reservoir to bring it on line to provide additional capacity, Mr. Hanks said it would be approximately $1.8 Million. Councilman Newman then said that the people who live in Asheville are spending $1.8 Million to bring this additional capacity in and to fix the water lines. In addition, we have the highest water rates in the state. There is a point of reason between being generous and helping out our neighbors and representing the constituents in the City of Asheville.

It was the consensus of the majority of Council to be a good regional partner and good neighbor and to give staff guidance to negotiate an agreement on an individual basis with counties and municipalities (charging them the same rate), based upon their need and our capacity.

Mayor Bellamy said that some of Councilwoman Cape's thoughts will be discussed at Council's retreat. She suggested Mr. Hanks send Council information about our current relationship with MSD.

In response to Mayor Bellamy, Mr. Hanks said that they use about five sources to gather information to update the Water Master Plan, including the National Climatic Data Center.

Vice-Mayor Jones suggested a template that can be sent out to people (1) advising them what we recommend in terms of voluntary conservation measures; (2) advising them where we are today; and (3) letting them know the City is taking this very seriously. We need some communication methods to help people understand and feel good about the stewardship and leadership that we have.

Mayor Bellamy asked that our website be revised to have water conservation measures on the homepage, and perhaps some type of virtual diagram that tracks how much water is being conserved. She also suggested that information be made available in the neighborhood newsletters and in eNews. In addition, she felt it would be appropriate to use the City's

government channel to disseminate this information, including the PowerPoint presentation Mr. Hanks presented to Council.

Mayor Bellamy said we need to thank those organizations that are doing a good job of water conservation, e.g. the Gorilla Car Wash on Patton Avenue, Bob & Denise's Car Wash on Merrimon Avenue, etc.

Mayor Bellamy adjourned the meeting at 8:45 p.m.

Keesha Lipe
CITY CLERK

Terry M Bellamy
MAYOR

Tuesday – November 13, 2007 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and Acting City Clerk Magdalen Burleson

Absent: Councilwoman Robin L. Cape (attending the National League of Cities Conference)

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Mumpower gave the invocation.

I. PROCLAMATIONS:

Mayor Bellamy acknowledged the great Veterans Day program that was held in collaboration with the Veterans Administration Hospital, Buncombe County and the City of Asheville.

A. PROCLAMATION PROCLAIMING DECEMBER 21, 2007, AS "HOMELESS PERSONS MEMORIAL DAY"

Mayor Bellamy read the proclamation proclaiming December 21, 2007, as "Homeless Persons Memorial Day" in the City of Asheville. She presented the proclamation to Ms. Amy Sawyer, representing the Affordable Housing Coalition, who briefed City Council on some activities taking place during the day.

II. CONSENT AGENDA:

At the request of Councilman Mumpower, Consent Agenda Items "D", "G", "H", "J", "K" and "L" were removed from the Consent Agenda for individual votes.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON OCTOBER 23, 2007, AND THE SPECIAL MEETING HELD ON NOVEMBER 7, 2007

B. RESOLUTION NO. 07-193-A - RESOLUTION APPOINTING A MEMBER TO THE AMERICANS WITH DISABILITIES ACT COMPLIANCE COMMITTEE

Summary: The term of Mary Robertson expired on August 22, 2007.

On October 23, 2007, it was the consensus of Council to appoint Ms. Kelly Rowe Rodriguez (representing the disabled community) to serve a three-year term, term to expire August 22, 2010, or until her successor has been appointed.

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C. RESOLUTION NO. 07-194-A - RESOLUTION APPOINTING MEMBERS TO THE FILM COMMISSION

Summary: The terms of Councilwoman Robin Cape, Mary Trimarco, Diane Linden, D. Smith, Lee Nesbitt and Stephen Lutz expired on November 1, 2007. There also currently exists a vacancy of Melinda Raines whose term expires on November 1, 2007.

On October 16, 2007, it was the consensus to reappoint Councilwoman Cape, Ms. Trimarco, Ms. Linden and Ms. Smith to each serve a three-year term respectively, terms to expire November 1, 2010, or until their successors have been appointed.

On October 23, 2007, it was the consensus of Council to appoint Adam Hobbs and Sandra Holden to each serve a three-year term respectively, terms to expire November 1, 2010, or until their successors have been appointed.

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D. RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH PISGAH LEGAL SERVICES FOR THE DEVELOPMENT OF A COMPREHENSIVE AFFORDABLE HOUSING PLAN

This item was pulled off the Consent Agenda for an individual vote.

E. ORDINANCE NO. 3553 - BUDGET AMENDMENT TO ESTABLISH A BUDGET FOR FUNDS RECEIVED FROM THE ASHEVILLE PARKS & GREENWAYS FOUNDATION AND THE ASHEVILLE ART ARTS COUNCIL TO SUPPORT PROGRAMMING COSTS FOR THE FISCAL YEAR 2007-08 CULTURAL RENAISSANCE ART PROGRAM AT THE W.C. REID CENTER FOR CREATIVE ARTS

Summary: The consideration of a budget amendment, in the amount of $25,269, to establish a budget for funds received from the Asheville Parks and Greenways Foundation and the Asheville Area Arts Council to support programming cost for the Fiscal Year 2007-08 Cultural Renaissance Art Program at the W.C. Reid Center for Creative Arts

The Asheville Parks and Greenways Foundation is a 501 (c) 3 non-profit organization dedicated to advocating for and supporting public parks, greenways and recreation services in conjunction with the City of Asheville. During the last year, the Foundation has served as the recipient of funds raised from grants, donations and a variety of fundraising activities to support the FY 2007-2008 programming cost of the Cultural Renaissance Art Program at the W.C. Reid Center for Creative Arts. The funds total $17,269 and the City of Ashville has drawn down the funds to use for the program.

The City of Asheville recently applied for and received an $8,000 grant from the Asheville Area Arts Council 2007-2008 Grassroots Arts Program Grant to support the Fiscal Year 2007-08 programming cost of the Cultural Renaissance Art Program.

Pros:
- Provide funding to support programming cost for FY 2007-2008.
- Continue to provide the cultural art program at the W.C. Reid Center as a summer and after-school arts and humanities program for youth ages 5-18. The program fills a void for structured, safe and supervised programs during summer months and after school hours when youth are most at risk to get involved in negative activities.

Con:
- None

The Parks and Recreation Department recommends City Council to approve the budget amendment, in the amount of $25,269, to establish a budget for funds received from the Asheville Parks and Greenways Foundation and the Asheville Area Arts Council to support programming cost for the Fiscal Year 2007-08 Cultural Renaissance Art Program at the W.C. Reid Center for Creative Arts.

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F. RESOLUTION NO. 07-196 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH PAYNE, MCGINN & CUMMINS, INC. FOR THE INSTALLATION OF A NEW 12-INCH WATERLINE ON CLINGMAN AVENUE

Summary: The consideration of a resolution authorizing the City Manager to execute a contract with Payne, McGinn & Cummins, Inc. in the amount of $509,623, for the installation of a new 12-inch waterline in Clingman Avenue.

Sealed bids were received by the Water Resources Department on October 2, 2007, for the Clingman Avenue Water System Upgrade Project. Four bids were received but the apparent low bidder; DPI Construction Company's apparent low bid was ruled not to be responsive due to failure to submit required Minority Business utilization forms with their bid. Responsive bids received are summarized as follows:

Clingman Avenue Water System Upgrade

Payne, McGinn & Cummins, Inc. Travelers Rest, South Carolina	$ 509,623.00
Buckeye Construction Company, Inc. Canton, North Carolina	$ 517,720.20
Thomas Construction Company, Inc. Johnson City, Tennessee	$ 528,756.01

The low bid submitted by Payne, McGinn & Cummins, Inc. is within the project budget. The bid has been reviewed by the Office of Economic Development for compliance with the City of Asheville's Minority Business Program which approved the minority outreach effort by Payne, McGinn & Cummins, Inc.

PRO:

- Planned street improvements along Clingman Avenue will make future replacement of this line more difficult and expensive. The existing waterline on Clingman Avenue is old and undersized. Previous surveys by the Insurance Service Organization (ISO) cited fire flow deficits along the Clingman Avenue corridor. Installation of this new waterline will have a positive impact on fire protection and the City's fire insurance rating. Funds are available for this project in the water capital improvement projects fund.

CON:

- Failure to replace this waterline now will increase the possibility that the new Clingman Avenue will have to be dug up either to make repairs to the existing waterline and or eventually replace the existing waterline and could have a negative effect on fire protection and possibly the City's fire protection rating.

City staff recommends City Council approve a resolution authorizing the City Manager to execute a contract with Payne, McGinn & Cummins, Inc. in the amount of $509,623, for the installation of a new 12-inch waterline in Clingman Avenue.

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G. APPROVAL OF GANG VIOLENCE PREVENTION INITIATIVE

This item was removed from the Consent Agenda for an individual vote.

H. BUDGET AMENDMENT FOR GUN BUY-BACK PROGRAM

This item was removed from the Consent Agenda for an individual vote.

I. RESOLUTION NO. 07-197 - RESOLUTION ACCEPTING EASEMENTS FROM RIVERLINK INC. FOR THE N.C. DEPT. OF TRANSPORTATION ENHANCEMENT PROJECT #4585, "FRENCH BROAD RIVER CORRIDOR CONNECTOR"

Summary: The consideration of a resolution accepting easements from RiverLink, Inc. for N.C. Dept. of Transportation (NCDOT) Enhancement Project #4585, "French Broad River Corridor Connector".

The City of Asheville is in need of an easement through 190 Amboy Road (the old Edaco salvage yard) in order to construct an 8' sidewalk that will connect two existing greenway trails as part of NCDOT Enhancement Project #4585, "French Broad River Corridor Connector." The owner of the property, RiverLink, has offered to donate the easement to the City. Once accepted, the City will have 100% of the right-of-way required for the project.

The total size of the property is 4.8 acres. The total easement being donated is 10,708 square feet or 0.25 acres. The City has not commissioned a professional appraisal of the property; however sales data indicates that the entire property sold for $900,000 in October of 2006. The total value of easement being donated to the City is estimated at $23,045. The City will pay for all transaction costs associated with the easement.

Pros:
- The easement is being donated, allowing significant costs savings for the City.
- Acceptance of the easement will allow the project to be completed.
- Increases the City's inventory of park space.

Con:
- Added maintenance costs.

Staff recommends that City Council approve a resolution accepting easements from RiverLink, Inc. for NCDOT Enhancement Project #4585, "French Broad River Corridor Connector."

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J. BOND ORDER AUTHORIZING THE ISSUANCE OF NOT TO EXCEED $40,000,000 WATER SYSTEM REVENUE BONDS OF THE CITY OF ASHEVILLE, N.C.

This item was removed from the Consent Agenda for an individual vote.

K. RESOLUTION AUTHORIZING THE APPROVAL, EXECUTION AND DELIVERY OF VARIOUS DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF CITY OF ASHEVILLE, N.C., WATER SYSTEM REVENUE BONDS; PROVIDING FOR THE SALE OF THE BONDS; SETTING FORTH

THE TERMS AND CONDITIONS UPON WHICH THE BONDS ARE TO BE ISSUED; AND PROVIDING FOR CERTAIN OTHER MATTERS IN CONNECTION WITH THE ISSUANCE, SALE AND DELIVERY OF THE BONDS

This item was removed from the Consent Agenda for an individual vote.

L. BUDGET AMENDMENT OF REVENUE BOND PROCEEDS

This item was removed from the Consent Agenda for an individual vote.

M. APPROVAL FOR THE FLOOD DAMAGE REDUCTION TASK FORCE TO MEET AS AN ADVISORY COMMITTEE ON A BI-MONTHLY BASIS TO CONTINUE TO STUDY, EDUCATE AND ADVOCATE ON FLOOD ISSUES

Summary: A letter from Mary Leonard White, Chair of the Flood Damage Reduction Task Force, reads in part: "The Flood Damage Reduction Task Force has worked for a year, meeting frequently, listening to many experts from over the state, and engaging in thoughtful discussion, and has therefore come to the conclusions contained in the following White Paper (note by City Clerk - The White Paper is not attached. See City Clerk for a copy). This paper simply fleshes out the recommendations made in the presentation to Council on June 12, 2007.

From the beginning we have been dedicated to the idea that there are practical ways to prevent the level of damage that happened in the Swannanoa watershed during the Ivan and Frances floods in 2004. We are even more insistent that educated efforts can and should save lives and property in frequent flood events. We are pleased at recent actions taken by City Council to strengthen enforcement of protective ordinances and at the positive reception that we received in our presentation to Buncombe County Commissioners. They also will receive copies of these recommendations. We are excited that the regional efforts that you initiated will continue.

Our Task Force has voted to ask your approval to meet as an advisory committee on a bi-monthly basis to continue to study, educate and advocate on flood issues. It doesn't feel to us that we are finished with our assignment.

We are appreciative of the assistance that has come from city staff – Cathy Ball, Chad Pierce, Laurie Saxton, Leslie Oliver, Stephanie Decker and intern Allana Young. Thank you for entrusting us with an important task that we have enjoyed. If there are questions or comments, we would be happy to hear from you."

N. ORDINANCE NO. 3556 - ORDINANCE REDUCING THE MEMBERSHIP OF THE ASHEVILLE FILM COMMISSION FROM 13 TO 11 MEMBERS

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O. GREENLIFE CONDITIONAL ZONING APPLICATION UPDATE

Summary: The City Manager committed to providing the Asheville City Council a follow-up staff report following the discussion with Council on October 16, 2007, regarding progress made with the Greenlife Grocery site re-design process.

Greenlife Grocery officials shared preliminary plans with City Council earlier this year in a public meeting, which is aimed mitigating continued traffic congestion problems that continue on and around the Greenlife Grocery property. At that time, Greenlife indicated a commitment to move forward with engaging a site design professional and begin a rezoning and site design process through the Asheville Planning and Development Department.

A pre-application meeting, the first step in the conditional zoning process, with Asheville's Technical Review Committee is scheduled for Monday, November 12, 2007. As result of this upcoming meeting, staff is expecting to expedite this process forward and would like the opportunity to share preliminary findings with City Council at its November 27, 2007, regularly scheduled meeting. Staff anticipates that a formal timeline for project completion can be determined at that time.

No formal action is necessary at this time. An informational update is also scheduled at the November 27, 2007, City Council meeting.

Mr. Joe Minicozzi presented Council with a timeline of the Greenlife issue and requested that this matter be discussed as he received a letter from the City Manager stating that there would be discussion on this date.

Ms. Brandy Boggs, resident on Maxwell Street, urged Council for action on the Greenlife issue as her concerns are noise and odor from the dumpsters and diesel trucks.

Mr. Paul Bidwell, attorney representing Mr. Reid Thompson, requested the matter be heard today in order to get some peace for the people who live in the community. He explained that Mr. Thompson is only trying to get answers as to why the City won't follow their own ordinances and procedures.

City Manager Jackson said that we are in the process of dialogue with the design professionals and have scheduled a pre-review conference. On November 27, 2007, we will have detailed information provided by the design professionals.

Mayor Bellamy noted that Mr. Reid Thompson is not banned, without escort, from the City buildings because this issue is before Council, but because of his other behavior.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Newman moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Freeborn and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

D. RESOLUTION NO. 07-195-A - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH PISGAH LEGAL SERVICES FOR THE DEVELOPMENT OF A COMPREHENSIVE AFFORDABLE HOUSING PLAN

Summary: The consideration of a resolution authorizing the City Manager to execute an agreement with Pisgah Legal Services, Inc. in an amount not to exceed $50,000, for the development of a Comprehensive Affordable Housing Plan.

As part of the Fiscal Year 2007-08 budget, City Council approved $50,000 for the development of a Comprehensive Affordable Housing Plan.

In order to move this initiative forward, staff recommends contracting for professional services with Pisgah Legal Services. The scope of services covered in the contract includes conducting research on best practices, convening an advisory task force and subcommittees to guide the process, and the writing and presentation of the final plan.

Mayor Bellamy has created a Mayor's Affordable Housing Task Force and invited 26 citizens to serve on the committee. She has charged this task force with guiding the development of the City's Comprehensive Affordable Housing Plan.

Pros:

- Fulfills a City Council strategic goal originally identified in 2003 and funded in the fiscal year 2007-08 budget process to develop a comprehensive affordable housing plan.
- Process is scheduled for completion by June 30, 2008.
- Utilizes the services of a non-profit agency that is uniquely qualified to implement the project based on its past experience facilitating a similar model with the 10 Year Plan to End Homelessness.
- Requires the guidance of a community stakeholder group to incorporate citizen expertise and input.

Con:

- None identified.

Staff recommends City Council approve a resolution authorizing the City Manager to execute an agreement with Pisgah Legal Services, Inc. in an amount not to exceed $50,000, for the development of a Comprehensive Affordable Housing Plan.

Councilman Mumpower was concerned of turning the City's responsibilities over to the non-profit and disagreed with investing up to $50,000 in that agenda. He felt we are creating another study which in turn becomes a shield for decisions that City Council was elected to make.

In response to Councilman Davis, Assistant to the City Manager Lauren Bradley said that this plan will be modeled after the 10-Year Plan to End Homelessness and we have seen tangible results from that Plan.

Councilman Newman was impressed with the group of people who will be investing a significant amount of time to look at innovative strategies to address this important challenge facing our community.

Mayor Bellamy said that the Community Development Division is short in staffing and this is a time-sensitive matter. She hoped Council will get behind this Plan and implement some of the short- and long-term recommendations that will be put forward.

Councilman Freeborn moved for the adoption of Resolution No. 07-195-A. This motion was seconded by Vice-Mayor Jones and carried on a 6-1 vote, with Councilman Mumpower voting "no."

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G. APPROVAL OF GANG VIOLENCE PREVENTION INITIATIVE

Summary: Based on a request from Mayor Bellamy, Councilman Jan Davis and members of the community, the Police Department is seeking approval to plan and execute a structured gun buy back program designed to remove as many guns as possible from the streets of Asheville. All functional guns turned in will be accepted by police personnel with no questions asked. All weapons will be destroyed after the program's conclusion and after an independent audit of all monies and weapons is completed.

Times and Locations: Various methods will be used to advertise the gun buy back program to include the City Cable Channel, flyers, and media coverage of this buy back effort.

Dec. 7, 2007 Stephens Lee Center 2-6 p.m.

Dec. 8, 2007	Burton St. Community Center	1-5 p.m.
Dec. 14, 2007	Shiloh Center	TBA
Dec. 15, 2007	Montford Community Center	TBA

Confidential Gun Turn Ins: A contingency is in the plan for individuals who may have fears of bringing guns to a public space. Officer Germaine Weaver's information will be made available so that he can arrange to meet such people privately. A 30-day extended period will be in place for citizens to turn in guns after the final public location on Dec. 15. Guns will be received confidentially through Jan. 15. Guns may be turned in to the Police Department during that time. All guns will be checked through NIBRS and ATF prior to destruction.

Police Personnel: There will be a minimum of two officers assisting Officer Weaver and Sgt. Eric Lauffer at each reception site. All guns will be appropriately tagged and the money exchanged will be in front of witnesses.

Money: Sgt. Lauffer will be the point of contact for all money issues. Any individual turning in a gun will receive $50 for a handgun or long gun, and $100 for an assault rifle. Sgt. Lauffer and the recipient will both sign the receipt. If someone does not want to sign, Sgt. Lauffer will have an officer on the scene sign the receipt.

The Brad Daugherty Foundation and the Eblen Foundation will be involved by accepting donations for the funding from the community. There is a community effort to match the City's $25,000.

The City of Asheville expenses will not exceed $25,000. The budget amendment provides funding for this program from the City Manager's contingency account.

Mr. Jessie Junior was concerned that there was not enough input from the African American community in terms of where this initiative is going and exactly what is going to take place.

Pastor Alphonso Mcglen, St. James AME Church, spoke in support of this initiative so we can move forward with trying to rectify some of the problems affecting our community.

Mayor Bellamy said that there are many ways to address gang prevention and violence and the gun buy-back was originated from the African American community. The goal is to get guns off the street. The Police Chief is committed to talking to the community and ministers about how it will be implemented. She noted that there are many programs in the community aimed at gang prevention and it will take a multitude of those initiatives to bring the community together. She is working toward a coalition so that everyone will know that others are doing. There are other initiatives that have been approved by Council and others that will be brought forward for City Council consideration. She urged the community to pull together to see how we can help our young people, because her goal is inclusive, not exclusive.

City Manager Jackson said that we will work toward better communication with the community to better understand what we are trying to accomplish with the program. He noted that the program is not set and the Police Chief can arrange a community meeting to invite input before they make final arrangements for the actual buy gun-back events.

Councilman Davis agreed that we need better communication with the business sector and the community. He did note that this program is a proven model and even though it is far from a total cure, it is an incremental step.

Councilman Mumpower liked the concept of the program; however, his concern was of a procedural nature. He felt that since we have a City Council Public Safety Committee, this matter should have been reviewed at that level, prior to City Council making a commitment.

Mayor Bellamy responded that as the person who worked to establish the four City Council committees, she will ask, at the Council retreat, that they be reviewed and dissolved.

Councilman Mumpower felt that the policy has been side-stepped and therefore resigned as Chair of the City Council Public Safety Committee and as a member of the City Council Revenue & Finance Committee. Mayor Bellamy accepted his resignation.

Councilman Freeborn felt it was appropriate to side-step the City Council Public Safety Committee in order to bring the issue forward in a timely manner. He felt that we need to continue to use every outlet possible to inform our citizens about programs and initiatives being considered by Council.

Councilman Freeborn moved to approve the plan and execute a structured gun buy back program designed to remove as many guns as possible from the streets of Asheville. This motion was seconded by Vice-Mayor Jones and carried on a 6-1 vote, with Councilman Mumpower voting "no."

H. ORDINANCE NO. 3554 - BUDGET AMENDMENT FOR GUN BUY-BACK PROGRAM

Summary: See Consent Agenda Item "G" above.

Councilman Freeborn moved for the adoption of Ordinance No. 3554. This motion was seconded by Vice-Mayor Jones and carried on a 6-1 vote, with Councilman Mumpower voting "no."

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J. RESOLUTION NO. 07-198 - BOND ORDER AUTHORIZING THE ISSUANCE OF NOT TO EXCEED $40,000,000 WATER SYSTEM REVENUE BONDS OF THE CITY OF ASHEVILLE, N.C.

Summary: The consideration of a (1) Bond Order authorizing the Issuance of Not to Exceed $40,000,000 Water System Revenue Bonds of the City of Asheville, North Carolina; (2) Resolution authorizing the approval, execution and delivery of various documents in connection with the issuance of City of Asheville, North Carolina Water System Refunding Revenue Bonds; providing for the sale of the bonds and setting the terms and conditions upon which the bonds are sold; and (3) Budget amendment, in the amount of $40,000,000, of revenue bond proceeds.

City Council has previously adopted a resolution directing that actions be initiated to enable the issuance of Water Revenue Bonds. Consistent with the North Carolina General Statutes, after the LGC approves the bond issue (which occurred on November 6th, City Council has to approve a Bond Order authorizing the issuance of the Bonds. City Council also must approve a Bond Resolution authorizing the forms of the final documentation for the bond issue which sets forth the parameters of the financing.

The Bond Order provides the following:

- In order to raise the money required to finance the projects for the improvement, repair and renewal of the water system, the 2007 bonds are authorized by City Council and shall be issued pursuant to North Carolina General Statues, Section 159-80;

- The principal amount of the 2007 bonds shall not exceed $40,000,000;
- The 2007 bonds shall be paid solely from the revenues from the operation of the water system; NOT from the general funds, credit or taxing powers of the City;
- The proceeds from the sale of the 2007 Bonds shall be deposited in accordance with the Series Indenture to pay the costs of the identified projects;
- The Bond order shall be effective upon adoption;

The resolution for the sale of bonds provides the following:

- Approves the issuance of 2007 refunding bonds in a principal amount not to exceed $40,000,000;
- Approves, confirms and incorporates by reference the provisions of the General Indenture and Series Indenture;
- Stipulate that the bonds shall be special obligations of the City and shall not be payable from the general funds of the City;
- Authorizes and directs the Mayor, City Manager, City Clerk and Chief Financial Officer to execute and deliver the Series Indenture and do all things necessary to issuance of the bonds and to carry out and comply with the Series Indenture;
- Approves the form and content of the Purchase Contract and stipulates that the bonds will be sold to the underwriters pursuant to the terms of the Purchase Contract to be executed on November 15th.
- Authorizes and approves the form and content of the Preliminary Official Statement and Official Statement (to be dated on or about November 15, 2007) and their use by the underwriters in the sale of the bonds.

City staff recommends City Council adopt the Bond Order, resolution and budget amendment.

Councilman Mumpower didn't argue the need for the bonds, but felt it is short-sighted to enter into such a demanding responsibility before we resolve our legal conflict with Buncombe County and the State of North Carolina on the Sullivan Acts.

Mayor Bellamy was extremely excited about the investment of $40 Million into our water system. We were known as having an aged system across the state and by making this investment we will have one of the newer systems since we are making this investment. This is long over-due.

Councilman Newman noted that the City's bond rating has been upgraded as a result of the City's management of the water system and because we are willing to make these significant investments to take care of this long neglected infrastructure. By investing the dollars now and running it in a sound business fashion, every dollar we invest in the system will have a bigger return.

Councilman Freeborn moved for the adoption of Resolution No. 07-198. This motion was seconded by Councilman Newman and carried on a 6-1 vote, with Councilman Mumpower voting "no."

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K. RESOLUTION NO. 07-199 - RESOLUTION AUTHORIZING THE APPROVAL, EXECUTION AND DELIVERY OF VARIOUS DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF CITY OF ASHEVILLE, N.C., WATER SYSTEM REVENUE BONDS; PROVIDING FOR THE SALE OF THE BONDS; SETTING FORTH THE TERMS AND CONDITIONS UPON WHICH THE BONDS ARE TO BE ISSUED; AND PROVIDING FOR CERTAIN OTHER MATTERS IN CONNECTION WITH THE ISSUANCE, SALE AND DELIVERY OF THE BONDS

Summary: See Consent Agenda Item "J" above.

Councilman Freeborn moved for the adoption of Resolution No. 07-199. This motion was seconded by Councilman Newman and carried on a 6-1 vote, with Councilman Mumpower voting "no."

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L. ORDINANCE NO. 3555 - BUDGET AMENDMENT OF REVENUE BOND PROCEEDS

Summary: See Consent Agenda Item "J" above.

Councilman Freeborn moved for the adoption of Ordinance No. 3555. This motion was seconded by Councilman Newman and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 28 - PAGE 262

III. PRESENTATIONS & REPORTS:

A. RECREATION BOARD ANNUAL REPORT

Mr. Jim Drummond, Chair of the Recreation Board, said that the Recreation Board's mission is advisory to the City of Asheville in matters affecting recreation policies, programs, finances and land acquisition related to total community recreation programs. He then mentioned the Recreation Board members.

Some fast facts regarding Parks & Recreation in Fiscal Year 2006-07, include (1) nearly 500,000 visitors - recreation centers, special facilities and programs; (2) offer 600 programs = 82,000 program hour; (3) host 245 community events = 126,000+ attendance; (4) 3,900 attendance Therapeutic Recreation Program; (5) 76,000+ meals food service programs; (6) 15,000+ contacts summer youth program; and (7) 42,000 rounds of golf. In addition, there have been 5 major festivals; 500,000+ visitors; and $25 Million+ economic impact.

The Fiscal Year 2007-07 goals include (1) Master Plan; (2) Parks & Recreation budget; (3) relationship building; (4) advocacy; (5) partnership with the Asheville Parks & Greenways Foundation and the Buncombe County Parks & Recreation; and (6) facility tours.

The Parks & Recreation Master Plan timeline is (1) start-up in November, 2007; (2) demographic - benchmark - inventory - service analysis in November, 2007 -February, 2008; (3) public process - financial analysis - funding - partnerships in January-March, 2008; and (4) Action Plan - Council review in April-June 2008.

Mr. Drummond invited Council to a play at the Reid Center to see why the Center is receiving such national attention.

Councilman Freeborn was pleased with the performance of the Recreation Board. He noted that the Parks & Recreation Department is responsible for economic development in the community. He praised the swimming program at Malvern Hills pool.

Councilman Newman looked forward to understanding the different funding options of the Parks & Recreation Master Plan and how it will work together with the budget process.

On behalf of City Council, Mayor Bellamy thanked Mr. Drummond and the entire Recreation Board for their willingness to work together with staff and the community.

B. STRATEGIC OPERATING PLAN QUARTERLY REPORT

Assistant City Manager Jeff Richardson said that the Asheville City Council identified short and long term goals at its last strategic planning retreat this past January and staff is providing a quarterly update on progress in several keys areas.

City Council has asked City staff to provide quarterly updates on key strategic initiatives associated with the eight priority areas reflected in the City's Strategic Plan. He then provided detailed performance indicators and measurements to date through the first quarter of Fiscal Year 2007-08.

This information is to update City Council on key operational initiatives specific to City Council's Strategic Operating Plan. No action is necessary at this time.

ECONOMIC DEVELOPMENT KEY INDICATOR REPORT

Economic Development Director Sam Power outlined key economic indicators for the City of Asheville and the Asheville MSA for the 2nd quarter 2007. These key indicators are provided to assist City Council in measurement of performance and future focus of Council Strategic goals, including economic development initiatives designed to support a dynamic and robust Asheville economy with balanced growth.

Employment in the Asheville Metro continues to grow at a positive rate, up 1.5% from one year ago. That figure is in line with the state growth (up 2.0%) and is slightly higher than the national average (1.3%). One highlight in job growth is in financial services, which grew 7.3% and significantly outpaced state and national averages.

Retail sales continue to provide strong growth reinforcing the City's place as a regional destination, and out performing the statewide growth. 2nd quarter sales are up 19.9 % over last year, while state wide, sales were up 11%.

In terms of local business environment, city business license revenues look to continue positive growth. City staff members are developing a revised business license application/renewal that will include improvements to our processes that allow staff to provide Council with better information to make decisions. The revised business licenses will be implemented with the new budget year.

Additionally, the 2nd quarter value of commercial building permitted in the city (new and alternations and additions) is substantially higher than last year, at $86.4 million in new value and $32.1 million in alterations and additions value.

In response to Council's comments, Mr. Powers said that he would provide additional information concerning (1) why the business licenses dropped; and (2) tracking the investment City Council has made into economic development.

Councilman Freeborn commended the City Manager, Assistant City Manager and Department Directors on acting on Council's priorities and not being shy to ask for the resources they need to carry it forward.

City Engineer Cathy Ball responded to Councilman Newman's request for an update on the Kenilworth Traffic Calming Project and the sidewalks in Haw Creek.

In response to Councilman Newman about the new state law surrounding ABC recycling, City Manager Jackson said that we have been working with the Downtown Association exploring some options of a role the City can plan. We have it scheduled on the City Council Planning & Economic Development Committee meeting for a staff report. He said that we will be looking for policy direction from the Committee and then bring the recommendation forward for the full Council consideration.

POLICE DEPARTMENT DRUG & COMMUNITY POLICING QUARTERLY REPORT

Police Chief Bill Hogan said the first quarter results addressing the Drug and Community Policing Seven Point Plan reveal significant results including some very promising possibilities in neighborhood housing areas traditionally less engaged with police. Following is a brief review of each point:

Seven Point Plan

1. *Increase Criminal Interdiction Traffic Enforcement*:
   Our five K-9 officers were trained in interdiction procedures which has resulted in time spent on highway interdiction and assisting other officers with searches.
   97 Criminal narcotics interdictions
   30 Narcotics arrests from searches = Schedule VI Marijuana 368.4g $1,965
   Methamphetamine 1.7g $200
   Schedule II Cocaine 12.4g $1,300

   Cash Seized: $57,383.00

2. *Increase Drug Investigative Special Operations:*
   264 arrests of which 52 were dealers
   2,401 crack cocaine rocks = $36,015
   1,523.1g powder cocaine = $138,369
   658.7g marijuana = $26,256
   31.7g methamphetamine = $3,170
   100 hits LSD = $500
   25.8g mushrooms = $2,580
   249 units prescriptions = $2,490

   Cash Seized: $303,671
   Firearms Seized: 48
   15 executed search warrants
   26 new investigations from Drug Tip Line

   Many of the charges are not drug related but occur as this unit contacts individuals in their drug suppression efforts, and subsequently discover outstanding warrants or other criminal activity.

3. *Increase Current Drug Suppression Unit Staffing by 25%:*
   The Drug Suppression Unit was fully staffed in May 2007. Newly assigned and current officers have been attending numerous classes to build additional skills. The results of our increased efforts are referenced above.

4. *Increase Partnership with U.S. Attorney's Office in Federal Drug Prosecution:*
   Specific investigative efforts are ongoing to build cases against the major drug Suppliers to include sources outside our region. These cases are long term efforts that result in numerous arrests with long federal prison sentences. We work daily with federal agencies to further these investigations. Our cooperative efforts with ATF and the U.S. Marshal Service Fugitive Task Force also aides in the capture and prosecution of drug dealers.

DEA	One full time task force officer
ATF	One part time task force officer for guns and drugs
U.S. Marshal	12 part time AFIST officers
FBI	Future plan to add one full time officer to task force

5. *Invest Additional Resources in Crime Prevention/Neighborhood Enhancement in Public Housing and High Crime Areas:*
   We have assigned one full time officer to dedicated crime prevention/community resource duties in public housing areas as of mid July 2007.
   10 community events
   Scheduling of regular meetings and dialogue with development managers

6. *Increase Community Policing and Outreach Initiatives:*
   Summer youth camp, "Back to Basics"
   Inaugural "Junior Citizen's Police Academy"
   CAYLA summer intern program with 4 students
   Renewal of Explorer Post is underway
   Mentoring efforts at the Reid Center
   The police department is working with IT Services and the County in an effort to track all officer time in targeted neighborhoods by using the Automatic Vehicle Locator System for tracking of community policing efforts.

7. *Explore Additional Policy Considerations:*
   NarTest personnel in final training stage for courtroom testimony
   High Point Model underway

Police Chief Hogan also noted that the Charlotte District Office of the U.S. Drug Enforcement Administration requested an unofficial review of the Asheville Police Department Narcotics Unit (APDNU). In summary, DEA Group Supervisor James Kenney and Major Levins were very impressed with the APDNU. "The unit is professional, tactically sound and innovative in their approach to a significant challenge. The unit leaders are progressively minded in their approach to dealing with the drug threat in the community. It is clear that this mindset starts at the very top of the APD."

In response to Councilman Mumpower, Chief Hogan said that the recommendations received by the DEA basically include: (1) additional narcotics training for officers assigned to the APDNU; (2) the creation of additional satellite police offices located in close proximity to the areas most effected by drug trafficking; (3) additional surge operations based on long-term intelligence and evidence collection that result in a large number of arrests and the execution of multiple search warrants; (4) additional detectives are need in the CDU to investigate the higher level of traffickers that supply the street dealers; (5) the defined goals of the unit need to be in line with the overall department goals; and (6) look for a link analysis system to track and connect suspects, locations and methods of operation. He said that they will work towards implementing the recommendations.

Police Chief Hogan responded to Councilman Mumpower about the overwhelmed judicial system.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO PERMANENTLY CLOSE A PORTION OF THE RIGHT-OF-WAY FOR ROSSCRAGGON ROAD

RESOLUTION NO. 07-200 - RESOLUTION TO PERMANENTLY CLOSE A PORTION OF THE RIGHT-OF-WAY FOR ROSSCRAGGON ROAD

Mayor Bellamy opened the public hearing at 6:47 p.m.

Assistant Public Works Director Richard Grant said that this is the consideration of a resolution to permanently close a portion of the right-of-way for Rosscraggon Road. This public hearing was advertised on October 19, 26, November 2 and 9, 2007.

N. C. Gen. Stat. sec. 160-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, David Matney, on behalf of 2130 Hendersonville Road, LLC, requested the City of Asheville permanently close a portion of the right of way for Rosscraggon Road.

Public Works Department staff has researched and contacted all agencies and the Greenway Commission and determined easements are required for the Metropolitan Sewage District and the City of Asheville Water Department.

Pro: The closure allows the property to be used to its maximum potential by adjacent property owners.

Con: In consideration of the portion of Rosscraggon Road, staff can find no potential challenges regarding this closure.

City staff recommends City Council approve a resolution to permanently close a portion of the right of way for Rosscraggon Road.

Mayor Bellamy closed the public hearing at 6:49 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Mumpower moved for the adoption of Resolution No. 07-200. This motion was seconded by Councilman Davis and carried unanimously.

RESOLUTION BOOK NO. 31 - PAGE 13

B. PUBLIC HEARING TO PERMANENTLY CLOSE A PORTION OF ATKINS STREET

RESOLUTION NO. 07-201 - RESOLUTION TO PERMANENTLY CLOSE A PORTION OF ATKINS STREET

Mayor Bellamy opened the public hearing at 6:50 p.m.

Assistant Public Works Director Richard Grant said that this is the consideration of a resolution to permanently close a portion of Atkins Street. This public hearing was advertised on October 19, 26, November 2 and 9, 2007.

N. C. Gen. Stat. sec. 160-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, David Matney, on behalf of 2130 Hendersonville Road, LLC, requested the City of Asheville permanently close a portion of Atkins Street.

Public Works Department staff has researched and contacted all agencies and the Greenway Commission and determined an easement is required for The Metropolitan Sewage District.

Pros: The closure allows the property to be used to its maximum potential by adjacent property owners.

Cons: In consideration of the location of the portion of Atkins Street, staff can find no potential challenges regarding the closure.

Staff recommends City Council approve a resolution to permanently close a portion of Atkins Street.

Mayor Bellamy closed the public hearing at 6:51 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Mumpower moved for the adoption of Resolution No. 07-201. This motion was seconded by Vice-Mayor Jones and carried unanimously.

RESOLUTION BOOK NO. 31 - PAGE 15

C. PUBLIC HEARING TO REZONE 11 AND 17 LARCHMONT ROAD FROM COMMERCIAL BUSINESS II DISTRICT TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

ORDINANCE NO. 3557 - ORDINANCE TO REZONE 11 AND 17 LARCHMONT ROAD FROM COMMERCIAL BUSINESS II DISTRICT TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

Mayor Bellamy opened the public hearing at 6:52 p.m.

Interim Planning & Development Director Shannon Tuch said that this is the consideration of an ordinance to rezone 11 and 17 Larchmont Road from Commercial Business II District to RS-8 Residential Single-Family High Density District. This public hearing was advertised on October 26 and November 2, 2007.

When property owners were notified for the Merrimon Avenue rezoning study, the property owners for 11 & 17 Larchmont Road (Phillip and Edna Ashley) contacted staff and expressed interest in a separate zoning consideration to rezone both residential properties from the existing CB-II zoning to the adjacent RS-8 zoning.

CB-II (Community Business II) was established to provide areas for medium to high density business uses serving several residential neighborhoods. The CB-II district is designed to be located primarily along minor and major thoroughfare streets.

RS-8 (Residential Single family, High Density) was established to provide for a high density per acre of single family dwellings where public infrastructure is sufficient to support such

development, and to stabilize the district's existing residential character in areas of existing high density single family development while promoting a suitable environment for single family living.

While CB-II zoning does allow for residential uses, the property owner has expressed no interest in redeveloping the properties for any commercial or higher intensity use. Based on the existing single family use, the RS-8 zoning is a more appropriate match. Additionally, there is a topographic separation between the subject properties and the commercially developed properties to the east where access is most easily achieved through a private residential driveway that is not suitable for commercial activity.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

At their August 14, 2007, meeting the Planning and Zoning Commission considered the rezoning request as part of the Merrimon Avenue zoning study. The Commission unanimously recommended approval of the rezoning request (7-0). Staff recommends approval of the rezoning request as well.

Pros

- Preserves existing housing stock
- Ensures buffering protection between residential and commercial uses
- Zoning matches existing land use

Cons

- Results in a slightly irregular zoning line

One of the adjacent property owners wanted the area to stay residential.

Mayor Bellamy closed the public hearing at 6:53 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Freeborn moved for the adoption of Ordinance No. 3557. This motion was seconded by Councilman Mumpower and carried unanimously.

ORDINANCE BOOK NO. 24 - PAGE 266

D. PUBLIC HEARING TO CONSIDER AN ECONOMIC DEVELOPMENT INCENTIVE GRANT FOR VOLVO CONSTRUCTION EQUIPMENT NORTH AMERICA INC.

RESOLUTION NO. 07-202 - RESOLUTION AUTHORIZING AN ECONOMIC DEVELOPMENT INCENTIVE GRANT FOR VOLVO CONSTRUCTION EQUIPMENT NORTH AMERICA INC.

ORDINANCE NO. 3558 - BUDGET AMENDMENT FOR VOLVO CONSTRUCTION EQUIPMENT NORTH AMERICA INC.

Mayor Bellamy opened the public hearing at 6:54 p.m.

Economic Development Director Sam Powers said that this is the consideration of an economic development incentive grant for Volvo Construction Equipment North America Inc. and the associated budget amendment, in the amount of $85,600. This public hearing was advertised on November 2, 2007.

This is consideration for an economic development incentive grant under the City of Asheville Economic Development policy. Volvo Construction Equipment North America, Inc. (herein "Volvo") operates and maintains a manufacturing facility in Buncombe County substantially all of which is located in the City of Asheville. Volvo is proposing new, taxable, capital investment of $20,000,000 for additional production equipment and facility improvements at the local facility, and has requested consideration for a cash grant under the City of Asheville Economic Development policy. The purpose of this investment is to allow Volvo to modernize its operations, and is projected to result in the retention of jobs that pay at or above the average wage for Buncombe County.

The City of Asheville proposes to offer Volvo a performance-based grant not to exceed $599,200. The performance-based grant will be paid over a seven year period. Payments begin after the investment is made, taxes are paid and verified, and the company requests payment. The amount of the annual payment will take into consideration the estimated annual ad valorem property tax revenue attributable to the capital improvements, and each annual payment is projected to equal approximately 75% of said estimated revenue.

The City will fund the payments from the general fund. Staff believes that the project will stabilize and improve the economic prospects of the City and the area.

Staff recommends City Council approve a resolution authorizing an economic development incentive grant in the amount not to exceed $599,200 for Volvo Construction Equipment North America, Inc.

A representative from Volvo explained to Council they have invested almost $20 Million over the past 18 months into the company. By the end of this year, they will have hired 75 new employees and they will add another 250-300 jobs over the next 3-4 years. He explained that the average wage for the new hires (once they have gone through progression) will be in excess of $17 per hour. In addition, they have worked closely with A-B Technical Community College in developing training programs.

Councilman Mumpower noted that Asheville is lucky to have Volvo in that they provide good, high paying jobs; however, he felt this is corporate welfare and he disagreed with that concept.

Mayor Bellamy spoke in support of the economic development incentive grant and was pleased that they chose Asheville to locate. She said we appreciate their investment in our community.

Councilman Newman said that in a perfect world every community could compete for businesses based on quality of life, good schools, etc. but Asheville can't dictate that reality across the rest of the state or country. If we don't participate, then we lose good jobs for our community. He felt that until our federal legislators make it a level playing field, to stop Asheville from completing for good jobs is a mistake.

Mayor Bellamy closed the public hearing at 7:00 p.m.

Mayor Bellamy said that members of Council have previously received copies of the resolution and ordinance and they would not be read.

Councilman Freeborn moved for the adoption of Resolution No. 07-202. This motion was seconded by Vice-Mayor Jones and carried on a 6-1 vote, with Councilman Mumpower voting "no."

Councilman Freeborn moved for the adoption of Ordinance No. 3558. This motion was seconded by Vice-Mayor Jones and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 21 - PAGE 269

Closed Session

At 7:05 p.m., Mayor Bellamy announced a short recess, at which time City Council will go into closed session. Councilman Mumpower then moved to go into closed session for the following reason: To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following matter: Special Proceeding involving Deed of Trust held by Vision Bank on property owned by Asheville Mountainside, LLC, and known as McCormick Heights. The statutory authorization is contained in N.C.G.S. 143-311(a)(3). This motion was seconded by Councilman Freeborn and carried unanimously.

At 7:25 p.m., Councilman Davis moved to come out of closed session. This motion was seconded by Councilman Freeborn and carried unanimously.

V. UNFINISHED BUSINESS:

A. PARKS CAPITAL IMPROVEMENT PLAN

Parks & Recreation Director Roderick Simmons said that $640,000 in Parks & Recreation capital improvement program (CIP) funding from the Fiscal Year 2007-08 budget remains unallocated. This report details staff's proposal for allocating that funding and presents additional Parks & Recreation CIP project decisions for Council's consideration.

The Fiscal Year 2007-08 adopted budget included $700,000 in unallocated funding for Parks & Recreation capital projects. Staff indicated to Council that we would return during the fiscal year and identify specific projects to be funded with this $700,000 allocation. At the October 23rd meeting, Council voted to allocate $60,000 from this $700,000 to fund the City's share of renovations at the Burton Street Community Center. This leaves $640,000 in current year CIP funding to be allocated to other projects.

An analysis of existing Parks & Recreation capital projects revealed funding needs that exceeded the $640,000 available in the current year's CIP. Therefore, before deciding on the funding priorities for the current fiscal year allocation, staff is recommending that Council address outstanding issues in existing projects.

Decisions on Existing Projects

Memorial Stadium

As outlined in the Parks & Recreation Capital Project Audit that was recently presented to Council, the Memorial Stadium Phase I capital project currently has a cash deficit. This deficit is due to: 1) unfulfilled fundraising pledges; 2) budget authority derived from the State PARTF grant was used to cover the cost of other project elements; and 3) general cost overruns due to inflation. The total deficit in the Memorial Stadium Phase I project is currently $589,830.

Staff is recommending that Council appropriate funding from the capital reserve portion of fund balance to cover this deficit. The City's capital projects fund balance currently has $638,000 set aside for capital project needs. This money has also not been allocated to any specific project, and is therefore available to be used. Since this $638,000 is reserved for capital

improvements, and thus not included in the City's general fund unreserved fund balance, appropriating this money would not impact the year-end general fund fund balance percentage.

Phase II of the Memorial Stadium project involves completing the elements of the project that are associated with state PARTF grant, which include: picnic shelter, soccer field, fitness trail, basketball court, event plaza, stadium seating renovation, landscaping, scorer's stand/press box, parking lot, sidewalks and walkways for ADA access. The total cost of completing Phase II is $1,527,000. Of this amount, $248,800 would be covered by the PARTF grant. The City contribution needed to complete Phase II is $1,278,200. The State is requiring that the City make a decision on this project by November 14 or forfeit the PARTF grant.

Phase III of the Memorial Stadium project involves construction of a veterans' memorial. The total cost of this phase as currently designed is $377,000. A federal grant of $247,500 has been awarded for this phase of the project; therefore the City contribution needed to complete the Veteran's Memorial is $132,500.

Reid Center Renovation

City Council approved $455,000 in funding for the Reid Center renovation as a part of the FY 2006-07 adopted budget. This funding was designated as the City's match for a State grant that had been awarded for the Reid Center project. Staff is recommending that we use a portion of this funding to cover the development of a final design and initiate immediate center improvements to the theater, weight room, doors and windows as a start to this project.

Staff recommendations for existing projects:

- **Memorial Stadium Phase I:** Close out with capital reserve funding.

- **Memorial Stadium Phases II & III:** For Phase II, return the PARTF grant and seek community input through the master planning process before proceeding with additional park elements. For Phase III, defer the decision on the veterans' memorial, and through the master planning process, consider a re-design of the memorial that would allow that portion of the project to proceed independently of the other park elements.

- **Reid Center Renovation:** Reallocate a portion of the $455,000 already approved for the project for design of the renovation to cover the development of a final design and initiate immediate center improvements to the theater, weight room, doors and windows as a start to this project; and defer a decision on the scope of the renovation until after the master planning process is complete.

Decisions on FY 2007-08 CIP Funding

Aston Park

The Aston Park project has a current budget of $611,576. To date, funding for this project has come entirely from private donations and a state grant. Staff is requesting City funding to add a retaining wall and security lights to the project as recommended by the community.

Reed Creek Greenway Phase II

In order to receive state grant funding for next phase of the Reed Creek Greenway project, City matching funds are needed in the current fiscal year. Additional City funding will be required in future CIP's in order to complete Phase II of this project.

Deferred Maintenance Projects

Parks and Recreation staff has identified three high priority deferred maintenance projects for funding in Fiscal Year 2007-08:

- Roof repairs at the Montford, Oakley and East Asheville recreation centers;
- Swimming pool improvements that will address safety & maintenance concerns at three (3) pool sites. We would use these funds to start to address the following ongoing maintenance issues: Upgrade plumbing, water leaks, bathhouses, ADA issues, pool decks, security lights, and motor pumps.
- Begin replacing the water supply system at the Municipal Golf Course, which currently does not meet state regulations for backflow prevention. This project will be completed over a two-year time period with half of the system replaced each year. An additional appropriation will be needed in the FY 2008-09 CIP to compete this project.

Staff recommends that Council adopt funding for the projects outlined above.

The following is a financial summary of staff's recommendations for existing and new project allocations:

Projects	Amount
Memorial Stadium Phase I Deficit	589,830
Aston Park	70,000
Reed Creek Greenway Phase II	36,500
Deferred Maintenance Needs:	
Recreation Facility Roof Repairs	150,000
Swimming Pool Maintenance	100,000
Golf Course Water Supply Phase I	250,000
Total Projects	1,196,330

Funding Sources	Amount
FY 2007-08 Unallocated CIP Funding	640,000
Capital Reserve Funding	556,330
Total Funding	1,196,330

Pros:

- Funds the deficit in the Memorial Stadium Phase I project,
- Allows the City to complete Aston Park Phase I and meet grant deadlines associated with Reed Creek Phase II,
- Begins to address some key deferred maintenance at other Parks' facilities,
- Stays within current resources with no appropriation from unreserved fund balance.

Cons:

- Does not provide funding for additional phases of the Memorial Stadium project, which means the City must return a State PARTF grant,
- Requires a significant contribution from the City capital reserve funds that could be used for other projects.

Staff recommends that City Council review the CIP information presented in this report and provide direction on funding Parks & Recreation Capital Improvement Projects.

Throughout considerable discussion, Mr. Simmons and City Manager Jackson responded to various questions/comments from Council, some being, but are not limited to: explanation of the Municipal Golf Course water supply system and can we look to raise fees for those who play to help pay; will we move forward with renovations to the Reid Center, will those renovations conform with the Parks & Recreation Master Plan; will returning a State PARTF grant for Memorial Stadium put the City in a bad light with the State; and is the State grant for the Reid Center renovation in jeopardy.

Ms. Leah Karpen urged Council to fund the Reid Center renovations.

It was Mayor Bellamy's hope that before we take on any new initiatives, the Reid Center, other existing projects and even deferred maintenance needs be completed. She felt we will get more community support when they see a project started and finished.

Councilman Mumpower spoke about the Memorial Stadium project and the donations we have received from other communities that are tied to the existing Plan. We need a memorial for our war dead and we have done a lot of work and have a wonderful design. If we move forward on the memorial and do what is necessary to bring life to the project in the existing form, he committed to raising the $132,500 to complete Phase III.

In response to the some of the elements in Phase II of the Memorial Stadium Project, Mr. Simmons explained that as we proceed through the Parks & Recreation Master Plan process, they will come up with a priority list and use that as a guide.

Councilman Mumpower said that even though he wouldn't support it, Council has the opportunity to go into their savings account to come up with the funds to complete this or any project in order to not lose a grant. The other issue is that we need to go forward with some clear plans and if not, we need to communicate with everyone that we have collected money from and let them know what is happening.

Mayor Bellamy looked forward to an update on the Parks & Recreation Master Plan process. She called on the community to become involved in the Master Plan process in order to let Council know what they want in the City of Asheville.

Councilman Freeborn moved to instruct City staff to accept and approve the Parks & Recreation Capital Improvement Projects as outlined by Mr. Simmons. This motion was seconded by Vice-Mayor Jones and carried on a 6-1 vote, with Councilman Mumpower voting "no."

B. CONTINUATION OF PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF PROPERTY LOCATED AT 55 PINEY MOUNTAIN DRIVE FROM RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT TO INSTITUTIONAL DISTRICT/CONDITIONAL ZONING FOR THE DEVELOPMENT OF A RETIREMENT RESIDENCE FACILITY

Mayor Bellamy said that this public hearing was held on October 23, 2007, and continued until this date in order for the person who has authority to make decisions regarding the project is present and confirmation on energy efficient and/or green items.

Urban Planner Julia Cogburn said that on October 23, 2007, City Council held a public hearing on a request for rezoning of 13.52 acres located at 55 Piney Mountain Road. The request was for rezoning from RS-2 to Institutional for the purpose of developing a 120 suite retirement residence facility.

After the public hearing and discussion, City Council continued the item until November 13, 2007, for additional information. A motion was on the table to approve the rezoning with the staff recommended conditions (including a condition that the use be restricted to a retirement suite residence facility with no facility provided medical component) and that the retaining walls in the development meet the new standards for retaining wall design and vegetation even if they are not of a height that would require the same. Questions were raised regarding green building and energy efficiency.

Since that meeting, the developer has provided the following list of "green" and/or energy efficient items that they propose to incorporate into their development.

Water/Sewer

- No kitchens – use 1/3 less water than apartment
- Low flow, flapper less toilets
- Low flow sink aerators
- Low Flow Shower heads
- Central Water heating system for entire building
- High efficiency water heater
- Re circulating Hot water system to reduce heat loss in pipes

Electricity/Heating

- Fluorescent lighting throughout building w/ electronic ballasts
- Motion sensors in all common areas
- High efficiency site lighting w/ astronomical timer for increased accuracy: uses photo, time and calendar to determine on/off
- Individual thermostats in suites
- Programmable thermostats in common areas
- High efficiency AC units
- Low E Argon windows

Site

- On site recycling center
- Trash compactor to reduce number of truck pickups
- Lower impervious area due to lower parking requirements
- Van service provided to reduce traffic impact
- Building designed to work with existing grades
- Shielded lighting to prevent light pollution to neighboring sites

If Council is accepting of this list the motion should add a condition that the green features identified at this meeting be required.

The developer has also discussed with staff plans to voluntarily annex the facility property into the City of Asheville. Staff failed to mention this matter at the meeting on October 23, 2007. The property is in the extraterritorial jurisdiction but not presently in the corporate limits.

The developer is in agreement with the condition concerning the retaining walls.

Ms. Cogburn said that the developer has requested that this matter be continued until November 27, 2007, in order to bring forward to Council some further engineering changes. Therefore, Councilman Freeborn moved to continue this matter until November 27, 2007. This motion was seconded by Vice-Mayor Jones and carried unanimously.

C. CONTINUATION OF SECOND READING OF ORDINANCE NO. 3546 - ORDINANCE TO CONDITIONALLY ZONE PROPERTY LOCATED AT 673

SAND HILL DRIVE FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT FOR THE DEVELOPMENT OF A MULTI-FAMILY APARTMENT PROJECT

Interim Planning & Development Director Shannon Tuch said that the petitioners have requested that the second reading be continued until November 20, 2007, in order to avoid a tie vote. Therefore, Councilman Newman moved to continue the second reading of Ordinance No. 3546 to November 20, 2007. This motion was seconded by Vice-Mayor Jones and carried unanimously.

VI. NEW BUSINESS:

A. RESOLUTION NO. 07-203 - RESOLUTION RESCINDING APPOINTMENT TO ASHEVILLE CIVIL SERVICE BOARD, DECLARING VACANCY AND APPOINTING JOHN P. MIALL TO THE BOARD

Vice-Mayor Jones, Chair of the Boards & Commissions Committee, said that there currently exists a vacancy on the Civil Service Board from Barbara Marlow who no longer resides in the City limits. Since there is no resource list, John Miall was recruited to fill the vacancy.

City Attorney Oast read the resolution as follows: "The Civil Service Law for the City of Asheville, N.C., S.L. 1999-303, provides for a board of five persons, all of whom must be qualified voters in the City of Asheville. At the time of her reappointment to the Board in June of 2007, Barbara Marlowe no longer resided in the City, having moved her residence in April of 2007, and was therefore ineligible for appointment to the Board. John P. Miall is a qualified voter residing in the City of Asheville, and otherwise possesses the qualifications for appointment to the Civil Service Board. Now, therefore, be it resolved by the City Council of the City of Asheville that (1) the resolution appointing Barbara Marlowe to the Asheville Civil Service Board (City Council Resolution No. 07-116 adopted June 12, 2007) is hereby rescinded, and a vacancy on the Civil Service Board is declared to exist; (2) John P. Miall is hereby appointed to the Asheville Civil Service board to serve a two-year term; and (3) John P. Miall is further appointed as the temporary Chair of the Asheville Civil Service Board for the sole and limited purpose of presiding during the Board's organizational meeting and until his successor is duly appointed by the City Council, as provided by law."

Councilman Freeborn moved for the adoption of Resolution No. 07-203. This motion was seconded by Councilman Mumpower and carried unanimously.

RESOLUTION BOOK NO. 31 - PAGE 18

VII. OTHER BUSINESS:

A. THE ELECTION OR APPOINTMENT OF CITY SCHOOL BOARD MEMBERS

Councilman Mumpower requested the issue of the election or appointment of City School Board members be discussed and felt that when his request was made in March of 2007, the delay in scheduling it in January of 2008 was unreasonable. Therefore, Councilman Mumpower moved to add the discussion of appointment vs. election of City School Board members to an agenda in November of 2007. This motion was seconded by Councilman Davis

Mayor Bellamy explained that the November agendas are full and, as seen by the continuance of two matters at this meeting, there are times when the agendas become unusually heavy. She apologized that she couldn't get the issue on the November agenda due to many end-of-the-year necessities. Even though this is not the first time she has had complaints about

not placing an item on a certain agenda, Council agreed that the Mayor would manage the agenda process and she has strived to do a good job in that management.

After a brief discussion about whether the issue should be brought to Council by the community or Council should initiate the discussion, the motion made by Councilman Mumpower and seconded by Councilman Davis failed on a 1-6 vote, with Councilman Mumpower voting "yes."

B. CLAIMS

The following claims were received by the City of Asheville during the period of November 2-8, 2007: Janice Kelly (Parks & Recreation), Jason D. Lambert (Parking Services), Hanna Raskin (Transit Services), Travelers Insurance (Parking Services), Enterprise Leasing (Parks & Recreation), Mary Ellen Ensign (Streets) and Eric Johanson (Water). These claims have been referred to Asheville Claims Corporation for investigation.

C. LAWSUITS

The City received the following Complaint on October 26, 2007, which is generally described as follows: E. Jerome Jensen, Jr., et al. v. City of Asheville. The nature of the proceeding is to declare the annexation ordinance for the Biltmore Lake area to be null and void or order a remand if the Court determines that the ordinance may be corrected, and staying the annexation proceedings. This matter will be handled by an outside attorney.

The City received the following Complaint on November 7, 2007, which is generally described as follows: Mary Byrd Daniels v. City of Asheville. The nature of the proceeding is a Complaint for personal injury resulting from negligence at the Civic Center. This matter will be handled by an outside attorney.

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Richard Cosgrove asked Council to investigate further the automobile accident his son had when a tree on the City's right-of-way fell on his son's car on Montford Avenue. Ms. Anita Irby agreed with Mr. Cosgrove in that a similar incident occurred to her. She too asked for Council's review. City Manager Jackson said that he and the City Attorney will review these particular cases and satisfy Council that they have been taken care of with all due consideration.

Mr. Ken Huck explained that he owns a vacant piece of property that is undergoing a natural regenerative process of germination, growth and ecological succession, the final outcome of which is a healthy forest. He is content to leave the land alone for the use of native plant and animal communities. However, he received a letter from the City of Asheville stating that the "long grass/weeds requires cutting." He feels that the City's letter demonstrates that Asheville sees the plant communities that pollinators and other creatures require to live as an unwelcome annoyance. He encouraged Council to clarify Section 15-7 of the Code of Ordinances to allow nature to flourish in abundance in our midst.

Ms. June Beachboard and Ms. Audrey Dotson, residents on Harmony Lane, urged Council to assist them with water from the street running onto their property and deteriorating the foundation of their homes. Mayor Bellamy noted that she has brought up the issue of alternative solutions to address this issue. After a brief discussion, and a suggestion made by Councilman Newman about investigating a program that MSD currently uses, City Manager Jackson said that he will provide Council with some detailed information on their locations and update Council on the schedule for Council to review the options. Mayor Bellamy asked the City Manager to send Ms. Beachboard and Ms. Dotson the report as well.

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 8:55 p.m.

Bertha Lipa
CITY CLERK

Jerry M Bellamy
MAYOR

Tuesday – November 20, 2007 - 5:00 p.m.

Regular Meeting

Present: Vice-Mayor Diana Hollis Jones, Presiding; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freebom; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and Acting City Clerk Magdalen Burleson

Absent: Mayor Terry M. Bellamy (City business)

PLEDGE OF ALLEGIANCE

Den Master Steven Love and Cub Scout Pack #72 led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Newman gave the invocation.

I. PROCLAMATIONS:

II. CONSENT AGENDA:

At the request of Councilman Mumpower, Consent Agenda Item "C" was removed from the Consent Agenda for an individual vote.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON NOVEMBER 13, 2007

B. RESOLUTION NO. 07-204 - RESOLUTION AUTHORIZING THE CITY MANAGER TO CONVEY LAND OFF BAXTER STREET TO DAVID FRECK

Summary: The consideration of a resolution authorizing the City Manager to convey land off Baxter Street.

On October 23, 2007, City Council authorized advertising for upset bids pursuant to a bid from David Freck for land off Baxter Street in the amount of $1,700.00. The advertisement was published on October 26, 2007, and no upset bids were received.

The land off Baxter Street was acquired by the City as part of the East End/Valley Street Community Improvement Program. It is a rectangular shaped fragment lot comprising 0.02 acre±. It has no access and was intended to be sold to an adjoining property owner. It is zoned RS8, and it is not suitable to build on. The bid from David Freck is in the amount of $1,700. We have in file an appraisal letter prepared by Troy Flack dated May 18, 2007. Mr. Freck proposes to acquire the subject parcel for assemblage with the property he owns next door.

The positive aspects of the transaction are:

1. The sale will be at fair market value as established by the upset bid process.
2. It will return property not needed for public use to the tax rolls.
3. It will transfer responsibility for maintenance to the private sector.

There is no negative impact.

The proceeds from the sale of this parcel will be Community Development Block Grant Program Income.

Economic Development staff recommends adoption of the resolution which will authorize conveyance of the property in conclusion of the sale by upset bid.

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C. RESOLUTION AUTHORIZING THE CITY TO ENTER INTO A CONTRACT WITH ACME PRESERVATION SERVICES TO UNDERTAKE AN ARCHITECTURAL SURVEY UPDATING ITS HISTORICAL INVENTORY TO HELP MITIGATE THE EFFECT OF IMPROVEMENTS ASSOCIATED WITH THE PACK SQUARE PEDESTRIAN AND ROADWAY IMPROVEMENT PROJECT

This item was removed from the Consent Agenda for an individual vote

D. ORDINANCE NO. 3559 - BUDGET AMENDMENT TO RECOGNIZE ADDITIONAL COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS

Summary: The consideration of a budget amendment, in the amount of $1,091, to recognize additional Community Development Block Grant (CDBG) funds.

The U.S. Department of HUD has recently provided documentation to the City regarding an addition of $1,091 to our Treasury line of credit for CDBG funds. This addition corrected an overcharge by HUD's fiscal agent on a Section 108 loan repayment made in 2001.

The budget amendment adds the amount to CDBG Contingency for future allocation as needed.

Pro: Recognizes additional funds due to the City from HUD and makes the funds available for allocation.

Con: None

Staff recommends approval of the budget amendment, in the amount of $1,091, to recognize additional CDBG funds.

ORDINANCE BOOK NO. 24 - PAGE 271

Vice-Mayor Jones said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Davis moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Freeborn and carried unanimously.

ITEM REMOVED FROM THE CONSENT AGENDA FOR AN INDIVIDUAL VOTE

C. RESOLUTION NO. 07-205 - RESOLUTION AUTHORIZING THE CITY TO ENTER INTO A CONTRACT WITH ACME PRESERVATION SERVICES TO UNDERTAKE AN ARCHITECTURAL SURVEY UPDATING ITS HISTORICAL INVENTORY TO HELP MITIGATE THE EFFECT OF IMPROVEMENTS ASSOCIATED WITH THE PACK SQUARE PEDESTRIAN AND ROADWAY IMPROVEMENT PROJECT

Summary: The consideration of a resolution authorizing the City of Asheville to enter into a contract with Acme Preservation Services in the amount of $105,300.42 to undertake an

architectural survey updating its historic architectural inventory, to help mitigate the effects of the improvements associated with the Pack Square Pedestrian and Roadway Improvement Project.

The Federal Highway Administration (FHWA) has consulted with the North Carolina State Historic Preservation Office (SHPO) and the Advisory Council on Historic Preservation (ACHP) in accordance with Section 106 of the National Historic Preservation Act and have determined that the proposed federally funded Undertaking (Pack Square Pedestrian and Roadway Improvement Project) will have an adverse effect on the Downtown Asheville Historic District.

The Memorandum of Agreement (MOA) among the Federal Highway Administration, North Carolina Division, the SHPO and the ACHP, upon consultation with the City of Asheville and the Pack Square Conservancy, stipulates that the City shall undertake an architectural survey to update the historic architectural inventory of the City's entire planning area to help mitigate the adverse effects. The SHPO has determined this area to be the approximately 41 square miles within the Asheville City limits. This survey will be paid for with grant funding.

Historic architectural resources within the City of Asheville have never been comprehensively surveyed, but have been documented through two large survey projects undertaken in the late 1970's and two survey updates conducted in the 1990's.

Pros:

- The City will have a current comprehensive architectural survey.
- The terms of the MOA will be fulfilled.
- The project will be paid for with grant funding.

Cons:

- The project will take two years to complete.

City staff recommends City Council adopt the resolution authorizing the City to enter into a contract with Acme Preservation Services to conduct a comprehensive architectural survey.

Historic Resources Director Stacy Merten responded to various questions/comments from Council, some being, but are not limited to: what is the productive purpose behind the survey; what are we trying to accomplish with the survey; do we have a lack of clarity of our historic architectural survey; have we done a survey of this type in the past; and what is the adverse impact of the survey.

Vice-Mayor Jones, liaison to the Pack Square Conservancy, said that the Pack Square Conservancy didn't want to utilize the $105,301 money that way, however, the MOU does stipulate that the City shall undertake an architectural survey to update the historic architectural inventory of the City's entire planning area to help mitigate the adverse effects.

Councilman Newman moved for the adoption of Resolution No. 07-205. This motion was seconded by Councilwoman Cape and carried on a 5-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 31 - PAGE 20

III. PRESENTATIONS & REPORTS

A. SCHOOL BOARD REPORT

Mr. Gene Bell, Chairman of the Asheville School Board, outlined the system configuration of one 5-star pre-school; one Middle School (Asheville Middle School); one Alternative School (Randolph Learning Center); five elementary magnet schools (Claxton Elementary, Dickson

Elementary, Hall Fletcher Elementary, Jones Elementary and Vance Elementary); and two special programs (Asheville Preparatory Academy and FX@AHS).

Using a chart, he explained the comparison of 16-year enrollment demographics.

Regarding socio-economics, 45.84% receive free- or reduced-price meals. As of October 8, 2007, 216 are reduced and 1,498 are free.

Regarding the special needs population, there are 496 students; 12.85 of 3,864; 50 Autistic students comprises the highest percentage statewide.

A breakdown by category includes 38 administrators, 329 teachers, 48 licensed support, 120 teacher assistants, 7 technicians, 50 clerical, 15 maintenance and 53 service workers.

Using a pie chart, Mr. Allen Johnson, Interim Superintendent of Asheville City Schools, explained the 2007-08 budget by revenue source and then by object of expenditure.

Accomplishments/recognitions for 2006-07 show (1) the freshman experience of absences, dropouts and discipline incidents are down and the grades are up; (2) All 31 2007 Advancement Via Individual Determination seniors were accepted into a college/university; (3) $473,000 IMPACTing School Leadership Grant; and (4) Homeland Security presented the WNC Regional Consortium for Safe Schools with a $474,000 grant.

He reviewed in detail the 2006-07 expected/high growth; the 5-year history of SAT scores; the Career Technical Education; graduation cohort data; ACS vs. NC graduation cohort data; ACS students proficient in both reading and math; and a 3-year look at achievement gaps.

The Asheville City School's strategic plan goals include (1) Asheville City Schools will produce globally competitive students; (2) 21st Century professionals will lead and teach in Asheville City Schools; (3) Asheville City Schools students will be healthy, responsible and engaged in positive relationships; (4) district leadership will guide innovation and continuous improvement in Asheville City Schools through collaboration and partnership with stakeholders; and (6) Asheville City Schools will use a 21st Century system to foster efficiency, accountability and communication.

Goals and objectives for 2007-08 include (1) offer an expanded real-world curriculum; (2) cultivate a multicultural staff; (3) ensure equal access/participation; (4) strive for a 100% graduation rate; (5) close the digital divide; and (6) improve communications.

Throughout discussion, Mr. Bell and Mr. Johnson responded to various questions/ comments from Council, some being, but are not limited to: what do you attribute the higher graduation rate to; City Council wants to know if there are things they can do from a policy standpoint; what are the facilities improvement plans as success of students can be seen with renovated buildings; how can we encourage school children to speak with business leaders for future employment; request for health and wellness initiatives; safe school planning coordination with the City and schools; need to expand the More at 4 Program; suggestion that all schools have interactive classrooms as is at Hall Fletcher; and how much is the drug activity in our neighborhoods affecting the efforts of the schools.

On behalf of City Council, Vice-Mayor Jones thanked Mr. Bell and Mr. Johnson for their hard work, and the hard work of the entire Board.

B. PUBLIC ART BOARD ANNUAL REPORT

Dr. Barbara Cary, Chair of the Public Art Board, said that the Board's mission is to identify and implement public art works that (1) recognize and promote Asheville's natural and made beauty; and (2) provide opportunities for distinctive objects and memorable places, spaces and experiences.

She introduced the members of the Board. Some public art fast facts include (1) 1983 Energy Loop was the first public art; (2) in 1999 Council adopted the Public Art Policy; (3) in 2000 the Public Art Board was established; and (4) 39 pieces in the Public Art collection valued at over $1 Million in 2007.

The 2006-07 Public Art Board accomplishments include (1) River Sculpture Festival at the French Broad River Park; (2) launched the Public Artist of the Year – Harry McDaniel – Decko Gecko; (3) Postcards from the Ledge; (4) restored the Energy Loop; (5) begin restoration of Urban Trail Station 7; (6) begin design of Urban Trail Station 1; (7) approved the Col. Morgan Memorial, Veterans Memorial and Asheville Mural Project; (8) Public Art collection appraisal; and (9) established a Public Art 2007-08 budget.

The 2007-08 Public Art goals include: (1) implement deferred maintenance and repair; (2) install Energy Loop & Decko Gecko; (3) continue fundraising; (4) participation in the Parks & Recreation Master Plan; (5) collaborate with the Parks & Recreation boards and initiatives; and (6) partner with the Asheville Parks & Greenways Foundation and Urban Trail Committee.

Dr. Cary responded to various questions/comments from Council, noting that they are looking forward to the River Festival becoming an annual event.

On behalf of City Council, Vice-Mayor Jones thanked Dr. Cary for her hard work, and the hard work of the entire Board.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE CONDITIONAL ZONING FOR PROPERTY LOCATED AT 22 VIRGINIA AVENUE FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO COMMUNITY BUSINESS II DISTRICT FOR A PROPOSED TELECOMMUNICATION TOWER.

Vice-Mayor Jones said that on November 16, 2007, Mr. Jonathan L. Yates submitted a letter stating "Please withdraw the application of AT&T (Cingular Wireless) for Conditional Zoning for Virginia Avenue/PINs 9638.14-24-5178 and 9638.14.24.5245 from the agenda of City Council for November 20, 2007. We plan to explore any other possible options in the surrounding area for this very important site."

V. UNFINISHED BUSINESS:

A. SECOND READING OF ORDINANCE NO. 3546 - ORDINANCE TO CONDITIONALLY ZONE PROPERTY LOCATED AT 673 SAND HILL DRIVE FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT FOR THE DEVELOPMENT OF A MULTI-FAMILY APARTMENT PROJECT

Vice-Mayor Jones said that this public hearing was held on October 23, 2007. On November 13, 2007, the petitioners requested, and City Council granted, a continuance to this meeting.

Councilman Newman moved for the adoption of the second and final reading of Ordinance No. 3546, including all the conditions in the original motion. This motion was seconded by Councilman Mumpower and carried on a 4-2 vote, with Vice-Mayor Jones,

Councilwoman Cape, Councilman Mumpower and Councilman Newman voting "yes" and Councilman Davis and Councilman Freeborn voting "no."

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VI. NEW BUSINESS:

A. RESOLUTION NO. 07-206 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT, AND ANY CHANGE ORDERS AND/OR ALTERNATES WITHIN THE BUDGETED AMOUNT, WITH VALLEY CREST LANDSCAPE DEVELOPMENT INC. FOR THE PROJECT KNOWN AS "2007-2008 PACK SQUARE PARK IMPROVEMENTS"

ORDINANCE NO. 3560 - BUDGET AMENDMENT TO RECEIVE FUNDS FROM THE PACK SQUARE CONSERVANCY TO COVER THE PORTION OF THE 2007-2008 PACK SQUARE PARK IMPROVEMENTS PROJECT NOT COVERED BY A STATE GRANT

City Engineer Cathy Ball said that this is the consideration (1) a resolution authorizing the City Manager to sign a contract with Valley Crest Landscape Development, Inc., in the amount of $7,464,912.00, for the project known as 2007 – 2008 Pack Square Park Improvements and authorizing the City Manager to execute subsequent change orders and/or alternates for the project up to the budget amount of $8,100,000; and (2) a budget amendment, in the amount of $4,340,663.00, to receive funds from the Pack Square Conservancy to cover the portion of this project not covered by a state grant.

This project generally consists of the construction and/or installation of a stage/pergola with extensive electrical service, expansive areas of brick paving, granite veneered signage/seat walls, an interactive fountain, large stabilized lawn, flagstone and concrete paving, small fountain with waterfall, seating terraces, landscape lighting, specialty railings, site furnishings, large fountain service to a 20 foot + diameter bronze bowl, street paving and granite curb installation, irrigation, and extensive landscape plantings. The project is located on a 6.5 acre site bounded by College Street to the north, Court Plaza to the east, Biltmore Avenue to the west, and South Pack Square to the south in downtown Asheville, North Carolina.

The Transportation & Engineering Department received and publicly opened two bids on Tuesday, November 6, 2007, at 2:00 p.m. Two bids were received from Valley Crest Landscape Development, Inc. and Paul Howard Construction Company, Inc. in the amounts of $ 7,254,700.00 and $ 7,918,545.00 respectively. After a thorough review of the bid documents by the Transportation & Engineering Department and the Office of Minority Affairs, Valley Crest Landscape Development, Inc., was found to be the lowest responsible bidder with a total bid of $ 7,254,700.00. All contract work was solicited using the "competitive bid procedures" in accordance with Federal guidelines (23 CFR 635A) and as a result, there was no requirement to receive a minimum number of bids.

The project will be financed with monies from the Federal Highway Administration (FHWA) via the N.C. Dept. of Transportation (NCDOT) and private sources. No City monies will be used for the subject project.

The Pack Square Conservancy wishes to execute Alternate A, E and G which add an additional $210,212.00 to the base bid of $7,254,700 for a total contract amount of $7,464,912.00.

Valley Crest Landscape Development, Inc., has demonstrated in a satisfactory manner that he has satisfied all of the requirements for the contractor's qualifications as stated in the

contract documents including evidence that he has performed several comparable projects in the past in a satisfactory manner.

The construction time for the Pack Square Park portion of the project is identified as 210 calendar days from the written notice to proceed and for the Green / Mid-Block Park portion of the project, it is 420 calendar days from the written notice to proceed as stated in the contract documents. The contractor will be required to pay the sum of $1,500.00 as liquidated damages for each and every calendar day that he shall be in default after the time stipulated in the contract.

In April 2006, City Council adopted a budget amendment in the amount of $3,759,337 from the NCDOT to pay for a portion of this project. The requested budget amendment in the amount of $4,340,663.00 to cover the remainder of the project up to the budget amount of $8,100,000. This amount is to be provided by the Pack Square Conservancy in accordance with the agreement.

Considerations of adopting a resolution authorizing the Mayor to execute this contract are as follows:

- The execution of this contract will allow the City to meet the requirements of an agreement between the City of Asheville and the North Carolina Department of Transportation (NCDOT) dated May 30, 2006;
- The bid amount of $ 7,254,700.00 for the construction of the 2007 – 2008 Pack Square Park Improvements Project is equitable, as compared to the engineer's estimate of $ $8,100,000;
- When the project is completed, downtown Asheville will be blessed with a "state-of-the-art" park that will be enjoyed by citizens and visitors for many years;
- The only foreseeable disadvantage of adopting a resolution authorizing the Mayor to execute this contract is the temporary land disturbance in the immediate area of the park and the temporary inconvenience to existing adjacent business owners.

Staff recommends City Council adopt (1) a resolution authorizing the City Manager to sign a contract with Valley Crest Landscape Development, Inc. in the amount of $7,464,912.00, for the project known as 2007 – 2008 Pack Square Park Improvements and authorizing the City Manager to execute subsequent change orders and/or alternates for the project up to the budget amount of $8,100,000; and (2) a budget amendment in the amount of $4,340,663.00 to receive funds from the Pack Square Conservancy to cover the portion of this project not covered by a state grant.

Vice-Mayor Jones said that members of Council have been previously furnished with copies of the resolution and ordinance and they will not be read.

Councilman Mumpower moved for the adoption of Resolution No. 07-206. This motion was seconded by Councilwoman Cape and carried unanimously.

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Councilman Mumpower moved for the adoption of Ordinance No. 3560. This motion was seconded by Councilwoman Cape and carried unanimously.

ORDINANCE BOOK NO. 24 - PAGE 273

B. ASSIGNMENT OF DEEDS OF TRUST ON MCCORMICK HEIGHTS PROPERTY

City Attorney Oast said that this is the consideration of a resolution authorizing discounted assignment of deeds of trust held by City on McCormick Heights property.

The McCormick Heights housing development (herein "Subject Property") is owned by Asheville Mountainside, LLC, and was operated by the Housing Authority of the City of Asheville. For years, the development experienced financial and other problems, eventually leading to its closure earlier this year. There are four outstanding deeds of trust on the property in the following amounts and priorities:

1. Mechanics and Farmers $1,900,000
2. City of Asheville CDBG loan $225,000
3. City of Asheville HOME loan $138,188
4. Housing Authority $100,000

Earlier this year the payments of the first deed of trust came into arrears, and the City, a holder of the second and third deeds of trust and owner of the adjacent property, was approached about taking over the indebtedness on the first deed of trust, and essentially becoming the owner of the Subject Property. For a variety of reasons, including the fact that the restrictions on the use of the Subject Property would continue to apply to the City, severely limiting the potential uses of the Subject Property, the City declined the opportunity. The Housing Authority began the process of closing the development down, and the City provided assistance to remaining tenants who needed to relocate. The project is now vacant.

The first deed of trust has been assigned to Vision Bank, which has initiated foreclosure proceedings. A sale has been ordered, and is scheduled for November 29. An investment group out of Atlanta has been in negotiations with Vision to acquire Vision's interest in the property under the first deed of trust. A similar arrangement has been negotiated with the Housing Authority ($10,000) to acquire the Authority's interest at about ten percent of the face value of the Housing Authority's loan.

The investor group has offered to acquire – through an assignment of the second and third deeds of trust – the City's interest in Subject Property for $50,000, which is about 14% of the face value of the secured loans.

The investors' reasons for doing this are that, if the legal interests represented by the deeds of trust are consolidated, and the investor acquires title to the Subject Property by a deed in lieu of foreclosure, the debt will be extinguished and the title to the Subject Property will be cleared. The restrictions that would have applied to the City, if the City had acquired the Subject Property, do not appear to apply to another party, so the Subject Property could be put to other uses.

If the Subject Property is sold through foreclosure, the City, being in second and third positions, would recover what was paid for it over and above what is necessary to satisfy the first deed of trust. The opening bid in foreclosure (the minimum that Vision can accept) is anticipated to be about $2.5 million (which includes accrued interest, a prepayment penalty, and other fees). Recent (2005) estimates have set the value of the Subject Property at $2.5 million, but this assumed a 90% occupancy rate of buildings in good repair. In the current real estate market, and with the Subject Property in its current condition, appears unlikely that this threshold bid will be met; exposing the City to the possibility that its indebtedness will be extinguished and that it will receive nothing.

Pros:

- Gains the City $50,000 that it might not otherwise recover
- Facilitates the redevelopment of the Subject Property
- Facilitates the return of the Subject Property to the tax base

- Clean termination to a troublesome project

Cons:

- Extinguishes the possibility, however remote, that the Subject Property would sell for more and the City would recover more for its interest

For the reasons set forth above, staff recommends adoption of the resolution.

Throughout discussion, City Attorney Oast and Mr. Scott Best (attorney whose firm is handling the foreclosure) responded to various questions/comments from Council, some being, but are not limited to: are there other costs, other than the Mechanics and Farmers loan, that may pile up in front of the $2.5 Million sale; will the $2.5 Million only make the first deed of trust whole; how much would the property have to sell for before the City gets their entire amount back; explanation of the foregoing procedure; what would need to happen for the property not to go into foreclosure; and explanation of how the City got involved using CDBG and HOME monies.

Ms. Bonnie Voss and Mr. Pete Hutchins asked for, and received, an explanation of the foreclosure, but was concerned the public is only now being made aware of the action.

Councilman Davis explained how McCormick Heights is not City property and noted that the City helped with relocation of the tenants with no obligation to do that. The property is open for other people to buy it.

Councilman Mumpower explained how he felt this endeavor was a tremendous failure, noting we have lost an affordable housing resource.

Because Councilman Newman felt that the property will sell more than $2.5 Million, meaning that the City would recover more for its interest than $50,000, he moved to decline the offer of $50,000 to assign the City's interest in its deeds of trust on the McCormick Heights property. This motion was seconded by Councilwoman Cape.

Vice-Mayor Jones stressed that even though this tax credit loan was issued in 1998, the City has 19 other tax credit projects that are all operating fine and are accountable. Since 1987, the CDBG funds that have come through our community total about $40 Million and that is a good strong track record.

The motion to decline the offer made by Councilman Newman and seconded by Councilwoman Cape carried on a 4-2 vote with Vice-Mayor Jones and Councilman Davis voting "no."

C. **RESOLUTION NO. 07-207 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A GRANT IN THE AMOUNT OF $2.7 MILLION FROM THE N.C. DEPT. OF TRANSPORTATION TO PURCHASE FIVE HYBRID REPLACEMENT BUSES FOR THE CITY TRANSIT FLEET**

ORDINANCE NO. 3561 - BUDGET AMENDMENT FOR 10% LOCAL MATCH FROM N.C. DEPT. OF TRANSPORTATION GRANT FOR FIVE HYBRID REPLACEMENT BUSES FOR THE CITY'S TRANSIT FLEET

Interim Transit Manager Mariate Echeverry, Interim Transit Manager, said that this is the consideration of (1) a resolution authorizing the City Manager to accept a grant in the amount of $2.7 million from the N.C. Dept. of Transportation (NCDOT) to purchase five hybrid replacement buses for the City transit fleet, and (2) a budget amendment, in the amount of $100,000, to cover the 10% local match ($200,000 is currently budgeted).

Most of the buses that compose the transit fleet are reaching their life-cycle, with more than ten years in operations; sixteen of these buses were purchased in 1996 and five were purchased in 2006. The buses purchased in 1996 are still operative; however they have begun presenting the problems attributable to age, engine repairs and other parts. Since these buses are not manufactured anymore, parts are spare and difficult to find and maintenance costs can become burdensome and may increase the operational costs in at least 30%. The fleet needs to be replaced and the replacement has been programmed for the next three years (Fiscal Years 2008, 2009 and 2010), purchasing five buses each year.

The City is recommending buying hybrid buses instead of diesel. Hybrid technology has been gaining strength mainly due to savings in fuel consumption (between 25 and 50%), no transmissions to overhaul and fewer brake pads to replace, plus the intangible cost of the cleaner air. Compared with low-emission diesel transit buses and CNG buses, the hybrids emit less than half the nitrous oxides (NOx) and one-fourth the carbon monoxide. In addition, the hybrid buses drive smoother and quieter than conventional diesel buses. Hybrid buses cost approximately 30% more than conventional diesel buses; however the differential cost can be recaptured through their life time.

Ms. Echeverry then showed a CATS hybrid bus cost comparison for Fiscal Year 2007.

The NCDOT will allocate $6 million in Fiscal Year 2008 to help cities that want to replace their fleet. The NCDOT will give preference to hybrid technology over the conventional diesel, mainly because of the benefits to the environment. To replace these five buses programmed for Fiscal Year 2008 the City will receive $2.7 million from the NCDOT and will contribute $300,000 for the 10% local match, of which $200,000 are already budgeted.

Pros:

- This action will reduce engine repairs and other parts and will keep maintenance costs under control.
- Hybrid buses will represent savings in fuel consumption between 25 to 50% and will benefit the environment.
- Hybrid buses are smoother and quieter, improving quality of service to the customers and less impact when running through the neighborhoods.

Con:

- NCDOT may fund partially this initiative, in which case the City will spend only the funds needed to match the State grant.

City staff recommends City Council adopt (1) resolution authorizing the City Manager to accept a grant in the amount of $2.7 million from the NCDOT to purchase five hybrid replacement buses for the City transit fleet; and (2) the associated budget amendment, in the amount of $100,000, to cover the ten percent local match ($200,000 is currently budgeted.)

Throughout discussion, Ms. Echeverry and Ms. Cathy Ball, Director of Transportation and Engineering, responded to various questions/comments from Council, some being, but are not limited to: with purchase of the hybrid buses, how much will we be saving operationally; request to pursue a course to replace all our buses with hybrids; and what is the cost of a hybrid bus vs. a diesel bus.

Councilman Newman was proud of the progress over the last couple of years with our transit system. The transit system has a huge environmental footprint on its own. Creating a clean transit fleet is one of the most powerful ways we can make a very real difference in our community in terms of air quality.

Councilwoman Cape thanked the NCDOT for recognizing their role in transportation, other than just roads.

Councilman Mumpower felt it is less than responsible of us to at least not look at the reality of $375,000 vs. $550,000 because if there is a significant difference in capital investment it alters the equation dramatically. His greater concern was process in that this was a last minute agenda item and not reviewed by the Transit Commission.

Ms. Ball said that his does not commit the City to spending any money at this point - it only acknowledges Council's support in moving forward in this area. City staff will come back to Council prior to actually purchasing the buses.

Councilman Freeborn, liaison to the Transit Commission, spoke in support of using the grant for five hybrid buses and noted that he received an e-mail from several Transit Commission members supporting this action.

City Manager Jackson suggested Council take action on these items and allow him to look into the process concerns raised with staff and improve upon that in the future.

Vice-Mayor Jones said that members of Council have been previously furnished with copies of the resolution and the ordinance and they would not be read.

Councilwoman Cape moved for the adoption of Resolution No. 07-207. This motion was seconded by Councilman Freeborn and carried on a 5-1 vote, with Councilman Mumpower voting "no."

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Councilman Freeborn moved for the adoption of Ordinance No. 3561. This motion was seconded by Councilman Newman and carried on a 5-1, with Councilman Mumpower voting "no."

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VII. OTHER BUSINESS:

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Jack Krupnick, property owner of 48 South Market Street (Pebbledash LLC), presented Council with a new prospective for the Eagle-Market Street Redevelopment. He purchased the property at auction with the intent of redevelopment and was unaware of the City's plans to redevelop the Block. In the interim, they have demolished to the shell and have been permitted for a new roof, floor and bib. Now that the City has reignited the energy to the redevelopment project of the Block, he has been in frequent communication with the individuals involved with the plans of the City. Despite their plans and the established construction funding by Blue Ridge Savings Bank, they feel that they would be willing to cooperate with a sale of their property. Their cooperation will allow the City to fulfill its desire to revitalize one of its blighted communities. This is something that a single project rehabilitator cannot attempt. It is with this sense of cooperation and desire to see good things happen in downtown Asheville that they offer our property. The only sense or urgency is that in order to offer at or below market value, or even as a bargain sale, they must act with the greatest efficiency. Every day that the City does not act causes their base price to rise with the carrying cost of our investment. He offered to sell their property at the value price and will continue to be open to this discussion. In addition, he presented a letter from the owners of the gravel triangle parking lot stating that they too would like to be included in the Master Plan.

City Manager Jackson said that the City's real estate advisor will be at Council next week and we will make this information available to them to be discussed with Council in closed session.

Closed Session

At 7:15 p.m., Councilman Mumpower moved to go into closed session for the following reasons: (1) To establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of contracts for the acquisition of real property by purchase, option, exchange or lease. The statutory authorization is contained in G.S. 143-318.11(a)(5); (2) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations, provided that any action authorizing the payment of economic development incentives will occur in open session. The statutory authority is contained in G.S. 143-318.11(a)(4); and (3) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including potential litigation. The statutory authorization is contained in G.S. 143-318.11(a)(3). This motion was seconded by Councilman Freeborn and carried unanimously.

At 8:13 p.m., Councilman Freeborn moved to come out of closed session. This motion was seconded by Councilman Freeborn and carried unanimously.

IX. ADJOURNMENT:

Vice-Mayor Jones adjourned the meeting at 8:13 p.m.

Kesha Lipe
CITY CLERK

Jerry M Ballard
MAYOR

Tuesday – November 27, 2007 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and Acting City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

The students from the 8th grade of Francine Delany New School for Children led City Council in the Pledge of Allegiance.

INVOCATION

Mayor Bellamy gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING NOVEMBER 2007 AS "NATIVE AMERICAN HERITAGE MONTH"

Mayor Bellamy read the proclamation proclaiming November, 2007, as "Native American Heritage Month" in the City of Asheville. She explained why the Veterans Administration Hospital has been re-named to "Private First Class Charles George Hospital" noting that Mr. George is from the Cherokee Tribe.

B. PROCLAMATION PROCLAIMING NOVEMBER 2007 AS "NON-PROFIT AWARENESS MONTH"

Vice-Mayor Jones read the proclamation proclaiming November, 2007, as "Non-Profit Month" in the City of Asheville. She presented the proclamation to Ms. Ann Von Brock and Ms. Allison Jordon, who briefed City Council on some activities that took place during the month.

C. PROCLAMATION PROCLAIMING DECEMBER 13, 2007, AS "SOUTH FRENCH BROAD NEIGHBORHOOD DAY"

Councilman Freeborn read the proclamation proclaiming December 13, 2007, as "South French Broad Neighborhood Day" in the City of Asheville. He presented the proclamation to Professor Ann Mahoney who briefed City Council on some activities taking place during the day.

Mayor Bellamy thanked Professor Mahoney for her leadership and for her reaching out to the West End/Clingman Avenue neighborhood as well.

II. CONSENT AGENDA:

At the request of Councilman Mumpower, Consent Agenda Items "C", "D", "E" and "I" were removed from the Consent Agenda for individual votes.

A. RESOLUTION NO. 07-208 – RESOLUTION ADOPTING THE 2008 SCHEDULED CITY COUNCIL MEETINGS

RESOLUTION BOOK NO. 31 – PAGE 23

B. ORDINANCE NO. 3582 – BUDGET AMENDMENT TO APPROPRIATE REVENUE AND BUDGET EXPENDITURES ASSOCIATED WITH THE SARDIS ROAD AND SCHENCK GATEWAY ANNEXATION AREAS

Summary: The consideration of a budget amendment, in the amount of $249,089, to appropriate revenue and budget expenditures associated with the Sardis Road and Schenck Gateway annexation areas.

In August 2007, City Council approved the annexation of three areas - Sardis Road, Schenck Gateway, and Biltmore Lake - into the City. Under state law, property owners are allowed sixty days to file legal challenges to any annexation. The period for filing legal challenges to the annexations has now passed, and the City has received a legal challenge from the Biltmore Lake area. As a result, this area will not be coming into the City as scheduled. The two remaining areas, Sardis Road and Schenck Gateway, will become part of the City on December 31, 2007. Therefore, the City needs to amend the current year budget to reflect expenses associated with serving these two areas between December 31st and June 30, 2008.

The cost of providing services to these areas for the remainder of FY 2007-08 will be $249,089. This amount includes $180,000 to begin design work for the installation of sewer lines in the Sardis Road area. The full cost of the sewer installation project for Sardis is approximately $1.8 million. The remaining sewer project costs will be included in the FY 2008-09 capital improvement budget which will be presented to Council next spring.

The City will receive a half-year of property tax and fee revenue from the Sardis Road and Schenck Gateway areas in FY 2007-08. In total, these two areas will generate $222,051 in revenue in FY 2007-08. In order to cover the one-time capital costs, the City will need to appropriate $27,039 in fund balance.

City staff recommends City Council adopt the budget amendment to appropriate revenue and budget expenditures associated with the Sardis Road and Schenck Gateway annexation areas.

ORDINANCE BOOK NO. 24 – PAGE 877

C. RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN CONTRACTS WITH WOLFPEN ASSOCIATES INC.; TURNER-MURPHY CONSTRUCTION; BUCKEYE CONSTRUCTION COMPANY; COOPER CONSTRUCTION COMPANY; PAYNE, MCGINN & CUMMINS; PIPELINE UTILITIES; AND HICKORY CONSTRUCTION COMPANY FOR THE REVENUE BOND WATER SYSTEM UPGRADE PROJECTS

This item was removed from the Consent Agenda for an individual vote.

D. RESOLUTION AUTHORING A CHANGE IN WATER POLICIES TO REFLECT THE ADDITION OF FUNDING INCENTIVES TO ENCOURAGE AFFORDABLE HOUSING AND INFILL DEVELOPMENT THROUGHOUT THE WATER SYSTEM SERVICE AREA

This item was removed from the Consent Agenda for an individual vote.

E. BUDGET AMENDMENT TO REFLECT THE ADDITION OF FUNDING INCENTIVES TO ENCOURAGE AFFORDABLE HOUSING AND INFILL DEVELOPMENT THROUGHOUT THE WATER SYSTEM SERVICE AREA

This item was removed from the Consent Agenda for an individual vote.

F. RESOLUTION NO. 07-212 – RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE AIR SPACE AT 150 COXE AVENUE, ASHEVILLE, NORTH CAROLINA

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer to purchase air space at 150 Coxe Avenue.

A bid has been received from Zona Lofts LLC in the amount of $1,872.36 for the purchase of 398 square feet of air space at 150 Coxe Avenue.

The property at 150 Coxe Avenue is the currently being used as a low density parking area. The project called Zona Lofts proposes to build a 15 story building that will house 161 residential units. This project has received approval from the Downtown Commission, the Planning and Zoning Commission, and the Final TRC approval was granted on October 1, 2007. Council approval was granted on August 28, 2007.

The façade of the building includes three architectural details that will require the purchase of air space and are specifically (1) an 18" deep cornice that wraps around the entire building above the tenth story at 49 feet above grade, (2) two architectural fins that protrude 4 feet by 1 foot 4 inches at the top level of the building, at 183 feet, 9 inches above grade and (3) a column of rounded overhangs placed at the center of the front façade of the building, at 49 feet above grade. The total area of these architectural details that encroach into public right-of-way equals 398 square feet.

Past appraisals indicate that the value of air space over public rights of way is 20% of the per square foot land value of the property applied to the horizontal area of the airspace. This method was used to extrapolate a value for the air space using the tax assessment for the property at 150 Coxe Avenue. The estimated value of the air space for 398 square feet is $1,827.36. The bid from Zona Lofts, LLC is to acquire the air space for the architectural details for the sum of $1,827.36.

The Tree Commission has reviewed the request for air rights for this building and has agreed that the architectural details will not interfere with urban landscaping in this area.

On August 28, 2007, Council requested staff to research the implementation of fees to cover the administrative time required in relation to air rights conveyance. At this time, staff is developing a fee charge to be applied to real estate issues such as this, ultimately to be reviewed by the Fees and Charges committee for the upcoming budget cycle. In the interim, a $500 administrative fee will be assessed at closing to cover advertising costs.

The positive aspects of the transaction are:

1. The sale will be at fair market value.
2. The architectural details will provide a more visually interesting façade on the building.
3. The rounded overhangs serve as a green feature to provide sun shade to reduce cooling needs.

There is no negative impact.

Economic Development staff recommends adoption of the resolution which will initiate the sale of the air space through the upset bid process.

G. RESOLUTION NO. 07-213 - RESOLUTION TO APPROVE THE CONFLICT OF INTEREST STATEMENT AS REQUIRED BY THE STATE OF NORTH CAROLINA FOR DISBURSEMENT OF THE ANNUAL STATE OF NORTH CAROLINA ALLOCATION VIA THE GRASSROOTS SCIENCE PROGRAM TO THE WNC NATURE CENTER

Summary: The consideration of a resolution authorizing the City Manager to execute all contractual documents and approval of a conflict of interest statement for an annual allocation to the WNC Nature Center.

Each year the State of North Carolina allocates and distributes funds to the 25 to 30 member museums, science centers and nature centers in North Carolina for the Grassroots Science Program as supported by North Carolina Senate Bill 1741. The total state funds available in FY 2007-2008 are $3,481,340. The Nature Center allocation for the same period is $112,879. Funds will be used to enhance the efforts of the Nature Center to develop exhibits, educational programs and collection to better accomplish the Nature Center's mission to improve public understanding and appreciation of the region's natural history.

Along with execution of the contract documents, the City is required to file a conflict of interest statement as required by House Bill 914 of the 2006 Session Laws, which repealed N.C.G.S. §143-6.2, effective July 1, 2007, and recodified into Chapter 143C of the State Budget Act.

Pros:
- Fulfills all contractual requirements of Chapter 143C of the State Budget Act to for the release of operating funds to the City of Asheville for the WNC Nature Center.
- Provide assurance to the Grantor that the City of Asheville has a conflict of interest statement in place as required by Chapter 143C of the State Budget Act.

Cons:
- None

The Parks & Recreation Department recommends City Council authorize the execution of all contractual documents and approve the conflict of interest statement.

RESOLUTION BOOK NO. 31 – PAGE 29

H. RESOLUTION NO. 07-214 – RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT, AND ANY CHANGE ORDERS WITHIN THE BUDGETED AMOUNT, WITH JLS COMPANY, LLC, FOR THE PROJECT KNOWN AS "KENILWORTH ROAD/SHILOH COMMUNITY TRAFFIC CALMING PROJECT"

Summary: The consideration of a resolution authorizing the City Manager to sign a contract with JLS Company, LLC in the amount of $186,106.00, for the project known as Kenilworth Road/Shiloh Community Traffic Calming Projects.

This project generally consists of the construction of traffic calming devices/measures in the Kenilworth and Shiloh communities. The traffic calming devices/measures include 14-foot and 22-foot asphalt speed humps, a mountable traffic separator, lateral shift islands, median islands, intersection re-alignment, signage, and various sidewalk, driveway, and drainage structure repairs.

The Transportation & Engineering Department received and publicly opened two bids on Monday, November 12, 2007, at 2:00 p.m. The bids were received from JLS Company, LLC and APAC – Atlantic, Inc. in the amounts of $186,106.00 and $219,171.00 respectively. After a

thorough review of the bid documents by the Transportation & Engineering Department and the Office of Minority Affairs, JLS Company, LLC, was found to be the lowest responsible bidder with a total bid of $186,106.00 *($83,904.00 Shiloh community and $102,202.00 Kenilworth Road)*. All contract work was solicited using the "informal bidding procedures" in accordance with State guidelines and as a result, there was no requirement to receive a minimum number of bids. Bids for this project were solicited on three separate occasions; the previous two occasions no bids were received.

The project will be financed with monies from the Housing Trust Fund *($84,000.00 approved by the City Council on May 11, 2004 for the Shiloh community)* and with monies already in the budget *($106,628.00)* for the Kenilworth community. Budget amendments are **not** needed for the subject monies.

JLS Company, LLC, has demonstrated in a satisfactory manner that she has satisfied all of the requirements as stated in the contract documents including evidence that she will adhere to the requirements of the City of Asheville's "DRUG FREE WORKPLACE".

The construction time for the project is identified as 120 calendar days from the written notice to proceed as stated in the contract documents. The work to be performed shall commence within 10 calendar days from the written notice to proceed as stated in the contract documents. The contractor will be required to pay the sum of $250.00 as liquidated damages for each and every calendar day that he shall be in default after the time stipulated in the contract.

Considerations of adopting a resolution authorizing the City Manager to execute this contract are as follows:

- The execution of this contract will allow the City to meet the requirements of the traffic calming policy for the Kenilworth and Shiloh communities;
- The execution of this contract will satisfy the wishes of the Kenilworth and Shiloh communities as indicated in the verified 60% petitions for both communities;
- The bid amount of $186,106.00 for the construction of the Kenilworth Road/Shiloh Community Traffic Calming Project is equitable, as compared to the engineer's estimate of $150,315.10, considering current economic conditions, and is within the established budget amounts;
- The only foreseeable disadvantage of adopting a resolution authorizing the City Manager to execute this contract is that up to 40% of the affected community members might be opposed to the recommended traffic calming devices/measures.

Staff recommends that City Council adopt a resolution authorizing the City Manager to sign a contract with JLS Company, LLC in the amount of $186,106.00, for the project known as Kenilworth Road/Shiloh Community Traffic Calming Project.

Mayor Bellamy said that we have heard a lot about the issues of traffic on Kenilworth Road and we tried twice, unsuccessfully, to get this project moving. This Council has been working to get these safety measures done on Kenilworth Road and in the Shiloh area and was pleased we can now begin work.

RESOLUTION BOOK NO. 31 – PAGE 31

I. RESOLUTION SUPPORTING THE DESIGN FOR A PERFORMING ARTS CENTER IN ASHEVILLE, NORTH CAROLINA

This item was removed from the Consent Agenda for an individual vote.

J. **RESOLUTION NO. 07-216 – RESOLUTION AUTHORIZING EXECUTION OF AN EASEMENT TO PROGRESS ENERGY FOR POWER TRANSMISSION FACILITIES ON CITY PROPERTY – UNDERGROUND LINE IN MARKET STREET AND VAULT TO SERVE PAVILION IN RENOVATED CITY-COUNTY PLAZA AREA**

Summary: The consideration of resolutions approving the conveyance of easements in City property and rights-of-way to Progress Energy Company for power transmission facilities.

Progress Energy is requesting easements on City property and rights-of-way to enable the installation of power transmission facilities to provide or improve service to new or expanded operations in the City.

The first is an underground line and vault that will serve the pavilion that is to be built in the renovated Pack Square / City County Plaza. The easement is being requested for the vault and for the service line, which will run from an existing underground line in Market Street to the vault, which is proposed to be located within the park area.

The second is a stub pole or support pole on the north side of Victoria Road, above the McDowell Street overpass. This pole will not carry a power line, but will provide additional support via guy-lines to a pole on the south side of Victoria that holds a line that serves the hospital complex.

The potentially affected City departments have reviewed this request, and no objections were noted.

Progress Energy Corporation pays a franchise tax annually for the use of City rights-of-way; the City typically does not require financial consideration for easements of this nature.

Pros:
- Facilitates the provision of utility service to facilities that provide a public service
- Market Street line is underground

Cons:
- None noted

Adoption of the resolutions is recommended.

RESOLUTION BOOK NO. 31 – PAGE 33

K. **RESOLUTION NO. 07-217 – RESOLUTION AUTHORIZING EXECUTION OF AN EASEMENT TO PROGRESS ENERGY FOR POWER TRANSMISSION FACILITIES ON CITY PROPERTY – STUB POLE ON NORTH SIDE OF VICTORIA ROAD NEAR MCDOWELL STREET OVERPASS FOR LINE TO SERVE MISSION HOSPITAL**

Summary: See Consent Agenda item "J" above.

RESOLUTION BOOK NO. 31 – PAGE 35

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Freeborn moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Newman and carried unanimously.

ITEMS PULLED OFF THE CONSENT AGENDA FOR INDIVIDUAL VOTES

C. **RESOLUTION NO. 07-209 – RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN CONTRACTS WITH WOLFPEN ASSOCIATES INC.; TURNER-MURPHY CONSTRUCTION; BUCKEYE CONSTRUCTION COMPANY; COOPER CONSTRUCTION COMPANY; PAYNE, MCGINN & CUMMINS; PIPELINE UTILITIES; AND HICKORY CONSTRUCTION COMPANY FOR THE REVENUE BOND WATER SYSTEM UPGRADE PROJECTS**

Summary: The consideration of a resolution authorizing the City Manager to sign contracts with eleven (11) construction companies for eleven (11) Water System Improvement projects to be funded with $ 40 million in revenue bond proceeds.

At the direction of City Council, the Water Resources Department retained engineering firms this summer to design major water system improvements projects. These projects were to be funded with future Revenue Bond proceeds. These projects have been designed and over the past six (6) weeks sealed construction bids totaling **$ 35,518,672** have been received for the eleven (11) projects resulting from this effort. Following is a summary of the bidding activity for each of these projects:

West Asheville / Wood Avenue Neighborhood Enhancement Water System Improvements

City of Asheville Project Number: WC 07-08-001

Consulting Engineer: Cavanaugh & Associates

Bids Opened @ 2:00 PM on September 26th

Bids Received:

Wolfpen Associates, Inc. Maggie Valley, North Carolina	$ 1,243,005.00
Buckeye Construction Company Canton, North Carolina	$ 1,414,292.80
DPI Arden, North Carolina	$ 1,443,390.00
Payne, McGinn & Cummins, Inc. Travelers Rest, South Carolina	$ 1,545,403.00
Cooper Construction Company Hendersonville, North Carolina	$ 1,714,845.00
Carolina Specialty Construction Asheville, North Carolina	$ 1,717,556.11
Buncombe Construction Company Asheville, North Carolina	$ 1,781,900.00

Pump Station Back-Up Power Generators

City of Asheville Project Number: WC 07-08-002

Consulting Engineer: Cavanaugh & Associates

First Bid Opening: 3:00 PM on September 26, 2007
(No bids were received at this time)

Second Bid Opening: 10:00 AM on October 19, 2007

Bids Received:

Turner-Murphy Construction $ 5,530,176.00
Rock Hill, South Carolina

Hickory Construction Company $ 5,772,000.00
Hickory, North Carolina

Hendersonville Road Water System Improvements

City of Asheville Project Number: WC 07-08-003

Consulting Engineer: McGill Associates

Bid Opening: 3:00 PM on October 4, 2007

Bids Received:

Buckeye Construction Company $ 3,142,080.00
Canton, North Carolina

Payne, McGinn & Cummins, Inc. $ 3,759,324.00
Travelers Rest, South Carolina

Cooper Construction Company $ 3,901,931.50
Hendersonville, North Carolina

Ruby-Collins, Inc. $ 4,948,281.00
Smyrna, Georgia

Hobby Construction Company $ 5,257,408.75
Newberry, South Carolina

Thomas Construction Company $ 5,596,581.34
Johnson City, Tennessee

Brevard Road and Clayton Road Water System Improvements

City of Asheville Project Number: WC 07-08-004

Consulting Engineer: McGill Associates

Bid Opening: 2:00 PM on October 4, 2007

Bids Received:

Buckeye Construction Company $ 1,872,007.00
Canton, North Carolina

Payne, McGinn & Cummins, Inc. $ 2,102,181.75
Travelers Rest, South Carolina

Cooper Construction Company $ 2,325,885.00
Hendersonville, North Carolina

Ruby-Collins, Inc. $ 2,406,412.00
Smyrna, Georgia

Hobby Construction Company $ 2,694,162.05
Newberry, South Carolina

Thomas Construction Company $ 2,877,165.27
Johnson City, Tennessee

Royal Pines Area Water System Improvements

City of Asheville Project Number: WC 07-08-005

Consulting Engineer: McGill Associates

Bid Opening: 1:00 PM on October 4, 2007

Bids Received:

Cooper Construction Company $ 2,279,155.00
Hendersonville, North Carolina

Payne, McGinn & Cummins, Inc. $ 2,354,895.99
Travelers Rest, South Carolina

Buckeye Construction Company $ 2,629,148.95
Canton, North Carolina

Hobby Construction Company $ 3,534,467.50
Newberry, South Carolina

Town Mountain Distribution, Storage & Pump Station Improvements

City of Asheville Project Number: WC 07-08-006

Consulting Engineer: Camp-Dresser & McKee

Bid Opening: 3:00 PM on October 10, 2007

Bids Received:

Buckeye Construction Company $ 1,556,986.00
Canton, North Carolina

AGR&R Corporation $ 1,697,000.00
Brevard, North Carolina

Turner-Murphy Construction $1,948,412.00
Rockhill, South Carolina

Haren Construction Company $ 1,968,000.00
Etowah, Tennessee

Central Business District Water System Improvements

City of Asheville Project Number: WC 07-08-007

Consulting Engineer: Camp Dresser & McKee

First Bid Opening: 2:00 PM on October 10, 2007
(Only 2 bids were received at this time)

Second Bid Opening: 1:00 PM on October 19, 2007

Bids Received:

Payne, McGinn & Cummins, Inc. $ 10,907,029.10
Travelers Rest, South Carolina

Valve Installation Program – Water System Improvements

City of Asheville Project Number: WC 07-08-008

Consulting Engineer: Brown & Caldwell

First Bid Opening: 2:00 PM on October 11, 2007
(Only 2 bids were received at this time)

Second Bid Opening: 11:30 on October 19, 2007

Bids Received:

Pipeline Utilities $ 1,976,962.90
Raleigh, North Carolina

Buckeye Construction Company $ 2,297,658.00
Canton, North Carolina

Bee Tree Junction Improvements

City of Asheville Project Number: WC 07-08-009

Consulting Engineer: Brown & Caldwell

First Bid Opening: 3:00 PM on October 11, 2007
(Only 2 bids were received at this time)

Second Bid Opening: 11:00 on October 19, 2007

Bids Received:

Hickory Construction Company $ 711,675.00
Hickory, North Carolina

Buckeye Construction Company $ 824,670.00
Canton, North Carolina

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Weston Road Water System Improvements

City of Asheville Project Number: WC 07-08-110

Consulting Engineer: Brown & Caldwell

Bid Opening: 3:00 PM on October 18, 2007

Bids Received:

Buckeye Construction Company $ 2,474,089.47
Canton, North Carolina

Payne, McGinn & Cummins, Inc. $ 2,772,466.95
Travelers Rest, South Carolina

Hobby Construction Company $ 2,790,951.68
Newberry, South Carolina

Beaucatcher – White Fawn 24-inch Waterline

City of Asheville Project Number: WC 07-08-111

Consulting Engineer: Brown & Caldwell

Bid Opening: 2:00 PM on October 18, 2007

Bids Received:

Buckeye Construction Company $ 3,825,506.20
Canton, North Carolina

Payne, McGinn & Cummins, Inc. $ 4,674,086.45
Travelers Rest, South Carolina

Hobby Construction Company $ 5,140,205.95
Newberry, South Carolina

Lowest Responsible Bidder Summary:

West Asheville / Wood Avenue Neighborhood Enhancement Water System Improvements

Wolfpen Associates, Inc. $ 1,243,005.00
Maggie Valley, North Carolina

Pump Station Back-Up Power Generators

Turner-Murphy Construction $ 5,530,176.00
Rockhill, South Carolina

Hendersonville Road Water System Improvements

Buckeye Construction Company $ 3,142,080.00
Canton, North Carolina

Brevard Road and Clayton Road Water System Improvements

Buckeye Construction Company $ 1,872,007.00
Canton, North Carolina

Royal Pines Area Water System Improvements

Cooper Construction Company $ 2,279,155.00
Hendersonville, North Carolina

Town Mountain Distribution, Storage & Pump Station Improvements

Buckeye Construction Company $ 1,556,986.00
Canton, North Carolina

Central Business District Water System Improvements

Payne, McGinn & Cummins, Inc. $ 10,907,029.10
Travelers Rest, South Carolina

Valve Installation Program – Water System Improvements

Pipeline Utilities $ 1,976,962.90
Raleigh, North Carolina

Bee Tree Junction Improvements

Hickory Construction Company $ 711,675.00
Hickory, North Carolina

Weston Road Water System Improvements

Buckeye Construction Company $ 2,474,089.47
Canton, North Carolina

Beaucatcher – White Fawn 24-inch Waterline

Buckeye Construction Company $ 3,825,506.20
Canton, North Carolina

The respective engineers for the projects have reviewed the bids and have recommended award to the lowest responsive bidder for each project. The bids have also been reviewed by Brenda Mills, Minority Business Program Coordinator, for compliance with the City of Asheville Minority Business Plan. These projects cumulatively have a 9.1% utilization of minority owned business and Ms. Mills has concurred that each lowest responsive bidder has complied with the City's Minority Business Plan.

PRO:

- Award of these bids to each of the lowest responsive bidders will further emphasize the City's resolve to systematically repair / replace our aging water system infrastructure. The reliability of water service to affected customers and available fire protection will be enhanced by these projects. The escalation of maintenance and repair costs for this aging infrastructure will be avoided. The budget amendment for these projects was approved by City Council at its November 13, 2007, meeting.

CON:

- Some of these projects are located in busy commercial corridors, including significant areas in Downtown Asheville. Construction of these projects will result in temporary inconveniences to the traveling public, affected merchants and their customers. An extensive public information campaign will aim to minimize these short term conflicts / inconveniences.

City staff recommends City Council approval of the City Manager signing a contract agreement with the lowest responsive bidder for each of these eleven (11) water system improvement projects.

Councilman Mumpower said there are arguments for upgrading our water system; however we are in a legal bind with Buncombe County and our State legislators and to invest this money with other loans before us is not in our best interest.

Councilwoman Cape was very supportive of moving forward in this process.

Mayor Bellamy said that the rate payers are paying back the revenue bonds and these are not property tax dollars. She was happy to see us become better stewards of the system than has taken place in many years. This Council has taken a strong initiative to improve the system and this is only a continuance of that process.

Councilman Newman moved for the adoption of Resolution No. 07-209. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 31 – PAGE 24

D. RESOLUTION NO. 07-210 – RESOLUTION AUTHORING A CHANGE IN WATER POLICIES TO REFLECT THE ADDITION OF FUNDING INCENTIVES TO ENCOURAGE AFFORDABLE HOUSING AND INFILL DEVELOPMENT THROUGHOUT THE WATER SYSTEM SERVICE AREA

Summary: The consideration of a resolution authorizing the change in Water Policies to add incentives for promoting affordable housing and infill development in areas where the current water lines or no water lines exist to support new development; and a budget amendment, in the amount of $250,000, prorating annual contribution for current fiscal year to $250,000 for January through June, 2008 incentive contribution.

A dedicated funding source is required to address infill and affordable housing issues in areas of the water system where small lines prohibit new building or water line extensions are required to support new development.

Staff has reviewed current policies and limitations on the water system per the Sullivan Acts. The City Attorney has reviewed the limitations and has confirmed the City's ability to offer water line extension incentives to encourage affordable housing and infill development in areas served by the Asheville water system. The recommended policy additions have been reviewed and endorsed by the Planning and Economic Development (PED) Committee at its November 14, 2007, meeting.

Recommended Policy:

IV. EXTENSION POLICY. D. Construction, Installation, and Project Close-Out.
12. (Added) Affordable Housing and Infill Development Incentives.

a. The water fund will budget $500,000 annually to be allocated to affordable housing and infill development water line upgrade and extensions throughout the water system. Funds

will be available annually on a first-come, first serve basis based upon project participation criteria.

b. Budget line item will be established to transfer funds annually from the water capital improvement program funds with $500,000 to be used on a first come, first serve basis for infill development and affordable housing water line upgrades or water line extensions.

c. Single project incentive amount shall not exceed $100,000 per project with a minimum 20 year return on investment payback. Water projects meeting affordable housing and infill development criteria in Buncombe County and Northern Henderson County are eligible to apply.

d. Funds not expended annually will be rolled over to the next Fiscal Year. Funds will be allocated to ensure $500,000 balance is maintained annually.

e. Approval will be based upon applicant receiving minimum score of 80 points per established criteria form.

f. Developers must provide the City with any necessary right-of-way or easements.

g. Approved projects with four or fewer units that do not require water line extension may use funds to pay for water line taps and meters. These fully funded projects would not be eligible for any water fee rebates through the City of Asheville affordable housing rebate program.

PRO:

- This water policy change will address funding needs to help support affordable housing initiatives and encourage infill development throughout the water system where line size or no water lines exist is an impediment to development.

CON:

- Funding could become an issue due to declining revenues based upon decreased consumption in the water system through conservation measures.

Staff recommends City Council adopt the resolution authorizing the change in Water Policies Ordinance to reflect the addition of Affordable Housing and Infill Development Incentives, with the change become effective January 1, 2008. In addition, based upon current budget staff recommends Council adopt a budget amendment, in the amount of $250,000, prorating annual contribution for current fiscal year to $250,000 for January through June, 2008 incentive contribution.

Councilman Mumpower felt we are establishing a 1/2 million dollar fund to support affordable housing initiatives; however, a lot of the people who will be paying for this money are people who struggle to make their own ends meet.

Councilman Newman said we are looking at creative ways to encourage the kinds of community development that we want to see happening in Asheville. The scarcity of housing that is affordable to working and lower class families is one of the central challenges facing Asheville. He felt this is a good policy. However, in the incentive evaluation form, he favored giving more weight (currently 5 points) to "accessible to public transportation, jobs and services". He suggested we assign 10 points for projects that are within 1/4 mile of from City transit stops or 20 points that are within 1/8 mile of a mile of City transit stops.

Mayor Bellamy noted that if the point assignments change to the "accessible to public transportation, jobs and services" then we would want to change the weight given for "affordable houses/units" (currently 10 points) because we want the overall goal of affordable housing to be the highest or equally rated to that as well.

Councilwoman Cape suggested separating "access to public transportation, jobs and services" to "access to public transportation" (5 points) and "access to jobs and services" (5 points). She also suggested weighting energy efficiencies. She said this is a best management practice that is being used in other communities. If we could run our water utility as everyone else in the state, we would have the option of using water as a planning tool. But we don't get to. This is a way to help us use our water to get the projects where we want them to be.

Mayor Bellamy said that Council could approve the resolution and ask City staff to bring back the Affordable Housing and Infill Development Incentives, taking into Council's recommendations.

Vice-Mayor Jones said that the number one issue that the private sector brings forward has to do with the expense of infrastructure upgrades. There is a secondary benefit in this strong message in that it makes a statement to the private sector that we've heard their issues and here is a step to help bring them to the table.

Councilman Newman moved for the adoption of Resolution No. 07-210. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

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E. ORDINANCE NO. 3563 – BUDGET AMENDMENT TO REFLECT THE ADDITION OF FUNDING INCENTIVES TO ENCOURAGE AFFORDABLE HOUSING AND INFILL DEVELOPMENT THROUGHOUT THE WATER SYSTEM SERVICE AREA

Summary: See Consent Agenda "D" above.

Councilwoman Cape moved for the adoption of Ordinance No. 3563. This motion was seconded by Vice-Mayor Jones and carried on a 6-1 vote, with Councilman Mumpower voting "no."

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I. RESOLUTION NO. 07-215 – RESOLUTION SUPPORTING IN PRINCIPLE THE DESIGN FOR A PERFORMING ARTS CENTER IN ASHEVILLE, NORTH CAROLINA

When Councilman Mumpower wanted at make clear that there is no commitment of City dollars in this action, Mr. Louis Bissette said that there is no expectation of City dollars in this action. He explained how they are trying to meet the contingency proposed by the Suzanne Marcus Collins Foundation grant, which pledged $1 Million towards this effort.

Councilman Davis, liaison to the Civic Center Commission, said that the Civic Center Commission reviewed this action and noted that their main purpose is the consideration of the existing Civic Center. They had concerns how this proposed building would affect the existing building and its operations. After discussion, however, they moved to strongly support the proposal noting concerns about the adaptive reuse portion affecting that building. Their consideration is that it would be better to be considered a stand alone because of operations at the existing building. They also wanted Council to consider a little more seating than what is proposed in the Council's performing arts proposal

Mayor Bellamy did think the City should fund, in the future, some part of the performing arts endeavor. She wanted to be clear that this action does not preclude this group from coming back to the City requesting funding.

City Manager Jackson said that he working with the performing arts group specifically to not put a timeline or a specific dollar amount in this action; however, it does pledge Council's support for that design and leaves the funding question open for future policy direction.

After a short discussion and with the understanding that there is no expectation that the City of Asheville is going to fund, at this point, any part of this process, Councilman Mumpower moved to amend the resolution to read "Resolution supporting in principle the design for a performing arts center in Asheville." This motion was seconded by Councilman Davis and carried unanimously.

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III. PRESENTATIONS & REPORTS:

A. PARKS & RECREATION MASTER PLAN UPDATE BY GREENPLAY LLC

Parks & Recreation Director Roderick Simmons said that the City of Asheville recently retained GreenPlay, LLC to lead the Parks and Recreation master plan process.

City Council approved $120,000 for the creation of a new Parks and Recreation Master Plan for the City of Asheville. After a thorough selection process via a request for proposals and a review by a selection panel of staff and board members, the Parks and Recreation Department selected GreenPlay, LLC as the best consultant for this project.

GreenPlay is a professional management consulting firm located in Broomfield, Colorado providing comprehensive parks and recreation master planning services throughout the United States. Ms. Chris Dropinski, Senior Principal serves as the principal-in-charge, and Mr. Pat O'Toole, Principal serves as the project manager.

The Master Plan Committee consists of key staff and two representatives each of the Recreation Board, Greenway Commission and the Public Art Board. The committee will serve as the steering group throughout the process. GreenPlay and the Master Plan Committee will meet prior to the City Council meeting on November 27 to kick off the master plan process.

Ms. Chris Dropinski and Mr. Pat O'Toole presented Council with the following PowerPoint presentation:

"Asheville Character and Resources: (1) natural beauty, concern for environment; (2) magnet for tourism and regional hub; (3) moderate growth, culturally diverse, young professionals and retirees; (4) engaged citizenry; (5) increasingly urbanized, neighborhood revitalization, historic preservation; and (6) university presence.

"Asheville Parks & Recreation Department (1) accredited department; (2) Gold Medal winner; (3) broad responsibilities; (4) fairly new leadership; (5) wide variety of services; (6) long history; and (7) 2005 – obtained new multiple facilities from County.

"The project approach was (1) start-up – setting expectations (a) review of documents, schedule, communications, official success factors; (2) public input process (a) public meetings/open houses/stakeholder meetings/survey (3) inventory and analysis of existing conditions for facilities and programs (a) GRASP LOS analysis/SWOT/best practices; and (4) recommendations and Action Plan (a) establish areas of focus; (b) identify priorities for redevelopment, improvement, new facilities and services, protection and preservation, property

acquisition, financing, policy; and (c) develop a Capital Improvement Plan and funding mechanisms.

"Setting expectations: (1) project vision and critical success factors; (2) roles and responsibilities; (3) project goals, scope and methodologies; and (4) schedule for milestones and approvals. The key issue is strong communication strategies.

"Public input process: (1) define stakeholders – strong representation; (2) strategy for input – specialized focus groups (a) recreation programs; (b) special event attendees; (c) cultural/public arts representatives; (d) park and recreation users; and (e) greenway users; (3) other strategies (a) public meetings; and (b) interviews; and (4) facilitate discussion – identify special needs and priorities. The key issue is getting input from a diverse community.

"Statistically valid survey (1) mail survey with option to follow-up by phone; (2) customized (a) specific to the City of Asheville's issues, including awareness, needs, satisfaction, participation, desires, priorities and willingness to pay; (3) mail to 5,000 households with expected return of 500-750 responses; (4) allows sub-analysis by planning areas and by respondent demographics, voters/non-voters, length of residency, etc.; and (5) additional strategies – e-mail, door knob hanger, higher level of City participation in administration available as options.

"The tool kit (1) community input; (2) demographics; (3) trends; and (4) level of service analysis (a) program evaluations; and (b) physical infrastructure.

"Existing conditions (1) inventory of relevant components (a) physical assets – developed parks; wildlife habitat; recreation/cultural facilities; (b) programs and services; and (c) alternative providers; (2) scoring of amenities; (3) qualitative; and (4) quantitative. The key issue is it's much more than just counting and mapping.

"Assigning value – scoring of relevant components: (1) quality; (2) condition; (3) location/connectivity; and (4) modifiers (a) comfort; (b) convenience; and (c) ambience.

"Recommendations and Action Plan (1) updates goals and policy statements for a clear vision and prioritized road map – based on discovery of needs and desires and identification of gaps and shortfalls; (2) addresses acquisitions, improvements, operations, maintenance, programs, standards, policy changes and funding; and (3) complete with Implementation and Action Plans specifically addressing (a) recreation programs; (b) special events; (c) cultural/public arts; (d) park and recreation facilities; and (e) greenways."

Ms. Dropinski and Mr. O'Toole responded to various questions/comments from Council, some being, but are not limited to: is City Council going to be a part of the forums; how are the City's different plans operationalized and how have you seen them implemented; what is the communication plan for the community; will GreenPlay look at facilities management and/or program management; will GreenPlay be identifying potential partners and how they can play into the delivery of service; how will technology play a part in the Plan; and will GreenPlan be providing Council with options used by other communities.

Vice-Mayor Jones confirmed that GreenPlay is going to help our community look at everything we want and prioritize those, understanding we have limited dollars. And with those priorities, they will set forward a very sound way that we can fiscally begin to upgrade, build, renovate, etc. In addition, even though it's great to get a capital dollar assessment, Council also needs to know what are we annually committing to add to our budget each year with each renovation, upgrade, etc.

Regarding the strong communication plan requested by Mayor Bellamy, she suggested an addendum to the City's Parks & Recreation Department website page with possibly a calendar of events for the Master Plan, possibly an on-line survey, use of our eNews, and a request to

locate the input sessions in different areas of the City so there will be a cross-section of social economic backgrounds, racial diversity, etc. for greater buy-in to the master planning process.

Mayor Bellamy said that in the Master Plan process she expects that Mr. Simmons will come back with a dollar figure for what needs to happen, like programming for the Reid Center, etc. Mr. Simmons responded that GreenPlay is looking at all the facilities and Reid Center is one that we will particularly highlight. We will look at user areas and how the Centers will need to be designed to meet those needs. Mayor Bellamy requested a budget figure be attached for each effort needed to complete that need, with figures regarding fundraising to date, and some potential steps to reach that overall budget. Ms. Dropinski said that Council will not only receive what the Plan will cost in general terms, but the operation and maintenance costs over time.

In response to Councilwoman Cape, City Manager Jackson said that the issue of the Parks & Recreation Department encompassing building maintenance is being looked at internally. He will develop a recommendation and bring that forward to Council in the first quarter of 2008.

B. AIRPORT AUTHORITY RESTRUCTURING PROPOSAL

RESOLUTION NO. 07-218 - RESOLUTION AUTHORIZING THE CITY TO ENTER INTO A RESTATED AND AMENDED AIRPORT AGREEMENT WITH BUNCOMBE COUNTY

Airport Director David Edwards briefed Council on the timeline of this proposal. He then gave the following PowerPoint presentation to Council regarding revisions to the Joint Agency Agreement and Lease Agreement for the Asheville Regional Airport Authority.

The Asheville Regional Airport was built by the City of Asheville between 1958 and 1961 for the benefit of Western North Carolina and operated by the City of Asheville until 1979. The Asheville Regional Airport was established in 1979 as a joint governmental agency organized and created by the City of Asheville and the County of Buncombe, pursuant to Article 20 of Chapter 160A of the General Statutes of North Carolina for the purpose of maintaining, operating, regulating and improving the Asheville Regional Airport.

The success of the current Airport Authority includes (1) the Authority since its creation has been successful in the development and operation of the Airport and has matured into a fully self-sustaining enterprise requiring no local financial assistance for its operations, maintenance and capital programs; (2) the Airport has become a regional asset for all of Western North Carolina that supports economic development through aviation and non-aviation development, and critical aviation related services; and (3) the amendments to be proposed will help the Authority operate more efficiently and effectively during the remaining term of its agreements, which will have a positive effect for the community.

Using a map, he then explained the current Airport property boundary.

Key current agreement provisions include (1) the term of the joint agency agreement expires in April 2018; (2) the Authority Board is comprised of 7 members with 3 appointed by the City, 3 appointed by the County, and 2 at-large member appointed by the 6 appointed members who must reside within Buncombe County; (3) Buncombe County has financial responsibility for the airport; (4) capital projects require the approval of the City; and (5) grants require the approval of both the City and the County.

With regard to the proposed amendments to the joint agency agreement and lease agreement: (1) term of agreements (a) no requested change at this time; and (b) if the City and County accept and approve the proposed amendments, and operations of the airport by the Authority continue to be successful, the Authority would hope the City and County would consider in the future an extension of the term or the creation of an Independent Airport Authority; (2)

Board composition (a) reduction from 7 to 5 members (effective July 2880) with 2 members appointed by the City, 2 members appointed by the County and 1 at-large member appointed by the 4 members; (b) the at-large member could reside in either Buncombe County or Henderson County; and (c) added language as to eliminate potential conflicts of interest of appointed members; and (3) other changes (a) acceptance of grants without approval by the County and the City; (b) the Airport Authority would be recognized as the sole sponsor of the Airport; (c) specific capital improvements would not require the approval of the City; (d) the Authority would be authorized to execute leases where such lease terms may extend beyond the Authority's lease term with the City; (e) changed the contracting authority for fire and law enforcement services; and (f) incorporation of language concerning locating a City fire station on Airport property.

Regarding payment in lieu of taxes (1) currently no ad valorem taxes are paid by the Authority and/or its tenants; (2) it is proposed that uses of Airport property that are non-aviation related and do not support aviation services would be subject to a payment in lieu of taxes at the discretion of the local unit of government having jurisdiction over such property; (3) the Authority will incorporate language into its leases requiring such lessees to make said payments if so imposed; and (4) the Authority itself would not be subject to any such payment in lieu of taxes.

He then showed some samples of planned development.

The specific areas of oversight/involvement include (1) board appointments (City/County); (2) bond approvals (County); (3) property acquisition (City); (4) property disposal (City); (5) zoning/permitting, etc. (City/County/Other); and (6) Airport Master Planning Process as required by the Federal Aviation Administration (City/County/community).

Throughout discussion, Mr. Edwards responded to various questions/comments from Council, some being, but are not limited to: how is the Airport Authority restricted when executing leases that extend beyond the Authority's lease term with the City; and insight into the payment in lieu of taxes feature.

When Councilman Mumpower questioned the urgency noting that the Airport hasn't had to come to Council a lot in the last six years, Mr. Edwards explained that as they get closer to the 2018 lease term deadline, they will have to come before Council more frequently, since the majority of the contracts will begin to expire over the next couple of years. In addition, they anticipate, with their Land Use Planning Study, trying to develop properties in and around the Airport taking a much more aggressive role to benefit the community and operation of the Airport. They will then be dealing with a lot more longer-term contracts in the future than historically have been dealt with.

Councilman Newman was generally supportive of the resolution; however, he explained why he felt there is no compelling argument to reduce the Board from 7 to 5 members. In addition, he questioned the conflict of interest provision, which would prohibit anyone who has even the smallest financial relationship with any kind of airport business from serving on the Board.

Councilman Davis agreed with Councilman Newman. He too felt there was no argument to reduce the Board members in that 7 members will allow more oversight; and, he felt that people who have more knowledge of the airport than he does, would be good to have on that Authority.

Mr. Edwards said that 5 members are easier to work with than 7 members. In addition, when they looked at best practices for an Independent Airport Authority, 5 members made up an Airport Authority. So, if the City, in the future, wanted to move in that direction, they would already have a 5 member board. Regarding the conflict of interest provision, they do not want to exclude aviation expertise, but if Council wants to reconsider that provision that it be clear in that

process as to which items those appointees need to not vote on, withdraw from that vote and not be part of that discussion.

Mayor Bellamy, who has had to be excused many times due to a conflict of interest due to her former employer, said that the U.S. Dept. of Housing and Urban Development set forth a clear conflict of interest statement and felt sure that the Federal Aviation Administration would have a set of similar standards to be used.

Mr. Bill Fishburne commented on the agreement and felt that more input from the general aviation community should be sought prior to voting on this matter.

Councilman Freeborn moved to approve Resolution No. 07-281, excluding the provision of the Board members being reduced to 5 members and excluding the new conflict of interest provision. This motion was seconded by Councilman Davis.

Councilman Freeborn, Chairman of the Airport Authority, said that after considerable review of the agreement, the Airport Authority did not have unanimous approval of the reduction of the Board; however, the proposal language was supported by a 5-2 vote.

After a brief discussion, Vice-Mayor Jones asked for a friendly amendment to the motion that an adopted conflict of interest policy be adopted by the Airport Authority within 90 days. Councilman Freeborn and Councilman Davis both accepted the friendly amendment to the motion.

Mayor Bellamy supported the 7 member Board and also supported Henderson County being a voting member on the Board. It's important to note that the City has worked with the Buncombe County on many different versions of this agreement. She clarified that the City isn't losing the Airport Authority - it's just that the City won't have to rubber-stamp everything they do, noting that they still have to come before Council on major initiatives. Again, the City Council is not losing their oversight in that they appoint members to the Board. We are not giving up anything, but streamlining the process.

City Attorney Oast clarified the action - adopt the interlocal agreement amendments as set forth herein, with the exception of the issues about the reduction of the size of the Board and the conflict of interest statement. He also noted that before Council is a restated and amended City-Airport Authority Lease Agreement. He believed that would require a separate vote and suggested City staff come back to Council on those amendments to the Lease Agreement.

Mayor Bellamy said that when the Lease Agreement comes before Council in January that it is adequately noticed for public comment.

The amended motion made by Councilman Freeborn and seconded by Councilman Davis carried on a 6-1 vote, with Councilman Mumpower voting "no."

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C. SPEEDWAY MEMORIAL PRESENTATION

Councilman Davis said that the NASCAR Memorial Committee has continued its fundraising efforts over the past year, with a goal of erecting a fitting Memorial at the current Carrier Park Recreation Park, located on Amboy Road.

The Asheville City Council and Buncombe County Commissioners jointly endorsed and supported efforts by a NASCAR Memorial Committee to raise money through private donations, in an effort to design and build an appropriate memorial commemorating the history of stockcar racing in the Asheville Buncombe County area.

He was pleased to report that the committee has received contributions totaling approximately $41,000 (none of which is City tax dollars), which is currently being held by Eblen Charities. Staff has completed a preliminary artist rendering of the size and scope of the proposed memorial. Based on this rendering, an approximate cost estimate for this project is $45,000.

The Buncombe County Commissioners have agreed to contribute a nominal monetary amount if necessary to complete the project. The committee feels confident of its ability to fundraise the remaining 10% necessary to build the memorial. In the coming months, as this continues to move ahead, he will keep council abreast of key milestones.

The Committee requests City Council further endorse this project moving forward, to include construction of the NASCAR memorial, under the oversight of the City Manager and with continued guidance of the Memorial Committee.

Mayor Bellamy thanked Councilman Davis for his leadership and for the time he has invested to reach out and achieve his goal.

Councilman Mumpower moved to endorse the project moving forward, to include construction of the NASCAR memorial, under the oversight of the City Manager and with continued guidance of the Memorial Committee. This motion was seconded by Vice-Mayor Jones and carried unanimously.

Closed Session

Mayor Bellamy said that during City Council's break, they would conduct a closed session. At 7:08 p.m., Councilman Mumpower moved to go into closed session for the following reasons: (1) To establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of contracts for the acquisition of real property by purchase, option, exchange or lease. The statutory authorization is contained in G.S. 143-318.11(a)(5); (2) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations, provided that any action authorizing the payment of economic development incentives will occur in open session. The statutory authority is contained in G.S. 143-318.11(a)(4); and (3) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including potential litigation. The statutory authorization is contained in G.S. 143-318.11(a)(3). This motion was seconded by Vice-Mayor Jones and carried unanimously.

Because there was no further business for closed session, Mayor Bellamy adjourned the closed session at 7:53 p.m.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER AMENDMENT TO A PREVIOUSLY APPROVED SIGNAGE PACKAGE IN ACCORDANCE WITH SECTION 7-13-10 OF THE UNIFIED DEVELOPMENT ORDINANCE FOR THE PROJECT IDENTIFIED AS INGLE'S MARKET LOCATED AT 85 TUNNEL ROAD, ASHEVILLE, NORTH CAROLINA

ORDINANCE NO. 3564 – ORDINANCE AMENDING THE INGLES' MARKET SIGNAGE PACKAGE AT 85 TUNNEL ROAD, ASHEVILLE, NORTH CAROLINA

Mayor Bellamy opened the public hearing at 7:55 p.m.

Interim Planning & Development Director Shannon Tuch said that this is the consideration of an amendment to the approved signage plan for the Ingles development 85 Tunnel Road, Asheville, N.C. This public hearing was advertised on November 16 and 23, 2007.

She said that on September 25, 2007, the Asheville City Council approved the sign package presented for the two separate Ingles developments located on Hendersonville Rd. and Tunnel Rd. respectively. In staff's original report it was noted that the signage for the two sites was substantially similar with only minor differences, probably the most significant of which was the lack of franchise signage requested for a "Starbuck's" at the second site located on Tunnel Rd.

The applicant, Ingles Markets, Inc., is now requesting an amendment to the original signage package to allow a second "Starbuck's" sign at the Tunnel Road site. The reason cited by the applicant for not including the second sign originally was that, at the time, it was unclear as to whether the franchise agreement would be resolved.

Signage plans must be approved by the Asheville City Council with any amendments resulting in a greater impact (size, number, etc.) also requiring approval by the Council.

The second "Starbuck's" sign is identical to that approved with the original application and will be a 16 square-foot wall-mounted sign, located at one end of the store.

In context with the approved package, the additional request is in keeping with the stated intent and purpose for the signage.

Pro:

- Provides identification of a franchise business located inside the larger grocery store.

Con:

- Contributes to the proliferation of signage along the city's corridors.

Staff recommends Council approve the signage plan amendment for the Ingles development project located at 85 Tunnel Road to allow for a 16 square foot, wall-mounted "Starbuck's" sign.

A representative of Ingles Markets spoke in support of the amendment noting that at the original time the sign package was approved by City Council, it was not clear as to whether the franchise agreement could be resolved.

Mayor Bellamy closed the public hearing at 7:59 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Freeborn moved for the adoption of Ordinance No. 3564. This motion was seconded by Councilman Mumpower and carried unanimously.

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V. UNFINISHED BUSINESS:

A. CONTINUATION OF PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF PROPERTY LOCATED AT 55 PINEY MOUNTAIN DRIVE FROM

RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT TO INSTITUTIONAL DISTRICT/CONDITIONAL ZONING FOR THE DEVELOPMENT OF A RETIREMENT RESIDENCE FACILITY

ORDINANCE NO. 3545 - ORDINANCE TO CONDITIONALLY ZONE PROPERTY LOCATED AT 55 PINEY MOUNTAIN DRIVE FROM RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT TO INSTITUTIONAL DISTRICT/CONDITIONAL ZONING FOR THE DEVELOPMENT OF A RETIREMENT RESIDENCE FACILITY

At Councilman Freeborn's request, Vice-Mayor Jones moved to excuse Councilman Freeborn from participating in this matter due to a potential conflict of interest. This motion was seconded by Councilman Mumpower and carried unanimously. At this time, Councilman Freeborn left the meeting room.

Mayor Bellamy said that this public hearing was held on October 23, 2007, and continued until November 13, 2007, in order for the person who has authority to make decisions regarding the project is present and confirmation on energy efficient and/or green items. On November 13, 2007, the developer requested that this matter be continued until November 27, 2007, in order to bring forward to Council some further engineering changes. That request was granted.

Ms. Cogburn briefly reviewed the list of "green" and/or energy efficient items the developer has to incorporate into their development; (2) the retaining walls in the development meet the new standards for retaining wall design and vegetation even if they are not of a height that would require the same; and (3) plans to voluntarily annex the facility property into the City of Asheville

Councilman Mumpower thought we are taking a bigger step than is in the best interest to the City.

Mayor Bellamy said that since we cannot make annexation a condition of the zoning action, we would rely on the good word of the developer.

Councilwoman Cape moved for the adoption of Ordinance No. 3545, to conditionally zone property located at 55 Piney Mountain Drive from RS-2 Residential Single-Family Low Density District to Institutional District/Conditional Zoning for the development of a retirement residence facility (and find that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation), subject to the conditions and modifications recommended by staff and the Planning & Zoning Commission and the standard conditions listed as follows: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (3) All existing vegetation that is to be preserved must be clearly indicated on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; (5) This project will undergo final review by the TRC prior to issuance of any required permits; and (6) all green features identified at the November 13, 2007, meeting outlined by City staff. This motion was seconded by Councilman Newman and carried on a 5-1 vote, with Councilman Mumpower voting "no."

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At this time, Councilman Freeborn re-entered the meeting.

B. RAISE THE ROOF COMMITTEE RECOMMENDATION FOR SUPPLEMENTAL W.C. REID CENTER FUNDING

ORDINANCE NO. 3565 - BUDGET AMENDMENT TO REALLOCATE $130,000 OUT OF $455,000 TO THE W.C. REID CENTER FOR THE GRANT MATCHING REQUIREMENT

Parks & Recreation Director Roderick Simmons said that the Reid Recreation Center "Raise the Roof" Campaign Committee is requesting that City Council fund the remaining balance of the Eckerd Family Foundation community challenge grant in the amount of $130,000. The campaign committee's request would allow them to continue to raise the necessary funding for the project and not jeopardize losing $900,000 in challenge grant funds.

The Eckerd Family Foundation had a stipulation that all funds raised be private dollars, which meant no public funding could be used to secure grant funding. They will now allow the committee to apply public funding towards securing grant funding.

The Raise the Roof committee is charged with raising $1.375 of private donations towards the total Reid Center renovations project.

$300,000 of the community fundraising total has been granted by the Eckerd Foundation, provided that another $300,000 is raised from other private, community sources. To date the Raise the Roof committee has raised $170,000 from private community sources. If the remaining $130,000 is not raised by December 31, 2007, the Eckerd Foundation Challenge Grant of $300,000 and the $600,000 Janirve Challenge grant are at risk.

The Raise the Roof Committee learned the remaining $130,000 to be raised may now be funded from public sources. Therefore, the committee is seeking an allocation from the city budget in this amount.

The options for funding the $130,000 reallocation include:

1) Fund Balance
2) Reallocation of Parks and Recreation Capital Improvement Plan funds.
3) Other sources

Staff recommends applying a portion of the $455,000 in the Capital Improvement Plan for the Reid Center towards the $130,000 grant matching requirement. This leaves $325,000 to be applied to the overall renovation and design budget. This action secures challenge grant funding while final planning occurs on the scope of total renovation/improvements for the center.

He then explained the funding sources as follows: Revenue (1) Janirve Foundation - $600,000 - challenge grant to be met by November 2008 - funds designed for facility renovation; (2) Eckerd Family Foundation - $300,000 - challenge grant to be met by community campaign by December 2007 - funds designated for theatre renovation, music room, dance studio, visual art classroom; (3) Raise Roof at the Reid Community Campaign - $170,000 - meet requirement of challenge grants and matching funds for future grants - funds designated for facility renovation; (4) North Carolina Parks and Recreation Trust Fund - $500,000 - project complete and funds spent by September 30, 2009 - funds designated for theatre renovation, art room, music room, administration office, foyer/gallery; (5) Junior League of Asheville - $45,000 - project complete and funds spent by December 2007 - funds designated as a match for the PARTF grant; and (6) City of Asheville - $455,000 - funds designated as match to PARTF grant.

The Reid Center project consists of (1) the Master Planning process starts November; (2) the public input process in January; (3) develop a scope of work that brings the building up to

code and start basic minor improvement (theatre, weight room, doors, etc.) - December-March; (4) decide on the total project budget - March; and (5) develop a final design for major Reid Center improvement (May-June).

Councilwoman Cape moved to reallocate $130,000 from the $455,000 from the Parks & Recreation Capital Improvement Plan fund to be used for the grant matching requirement. This motion was seconded by Councilman Davis.

There was a brief discussion initiated by Vice-Mayor Jones about the plan for fund-raising efforts and the role of the Junior League of Asheville.

In response to Vice-Mayor Jones, Assistant Director of Parks & Recreation Debbie Ivester updated Council on how much has been raised by individuals and how much is contributed by foundations regarding the Reid Center.

After a brief discussion, Councilman Newman supported the process and said that even though it may look like we are delaying making decisions, we want to get good information in terms of what needs to be done in terms of the basic renovations and beyond.

The following individuals spoke in support of using these funds to match the grant for the Reid Center:

Ms. Leah Karpen
Ms. Shirleigh Moog
Ms. Leanna Joiner
Ms. Vivian Gaddy

When Councilman Mumpower requested to make a PowerPoint presentation on this matter, Mayor Bellamy read a portion of City Council's rules as follows "electronic presentations are limited to agenda items with presentation materials provided prior to the meeting by City staff, applicants, or organized opposition."

Councilman Mumpower presented Council with information of the Reid Center, which was a minority presentation on a plan to restore Asheville's Reid Community Center, as follows: "The Reid Center - current realities (1) a poorly maintained facility; (2) a good resource for children in a high risk area; (3) a focus of community interest and investment; and (4) an island of safety. Current hurdles include (1) the budget has grown beyond realistic capacities; (2) grants and funding commitments are at risk; (3) deferred maintenance is creating urgency; and (4) restoration can trigger code issues that raise costs. A foundation for solutions include (1) there are broader realities beyond bricks and mortar; (2) the lack of community and parental involvement in the welfare of many of these children is a major issue; and (3) the open air drug activity, prostitution, and thug behavior on the streets leading to the Reid Center is horrific. The Reid Center is a three legged stool - (1) Leg 1 (a) adjust the restoration plan to a more realistic place; (b) do it now; (c) consider appropriations from our savings account; and (d) make the city funds conditional upon 2 other components; (2) Leg 2 (a) make the restoration conditional upon community involvement; (b) a formal commitment by all organized community groups in the area to get involved in the Reid Center and crime prevention; and (c) a commitment by 50 parents to get involved directly volunteer in the Reid Center activities and to do what's necessary to maintain that number of volunteers going forward; and (3) Leg 3 (a) create a "Reid Center Street Safety Zone"; (b) include Erskine, Walton, Livingston, Lee Walker, Aston Park, Bartlett Arms, South French Broad, Depot Street, Oakland Road Area, and the Choctaw, Short Cox areas in the zone - these are the streets the children travel to get to the Reid Center; and (c) create an intentional APD 'surge' enforcement initiative that curtails all open air drug dealing, prostitution, and thug activity in this zone using Kimberly Avenue and surround streets as a model. The Reid Center - Why? (1) bricks and mortar are never enough; (2) parents and one on one involvement are the only thing that works; and (3) we mock the potentials of the Reid Center if the children who come

there must travel through a gauntlet of crime. A one or two legged stool will not work - let's do it now, let's do it all, let's do it right - together."

Mayor Bellamy explained where Council has been on the Reid Center. On a 6-1 vote, Council allocated $455,000 for the Reid Center with just the idea we need to do it. It came back to Council based on the work the community did to get more support for this initiative. In her opinion it's deplorable that the community had to raise funds since it's the City of Asheville's facility. We need a capital plan for our facilities. We have many facilities that need to be addressed. She felt that using a blanket statement saying that no parents are seen at the Reid Center, especially by a person who was elected to represent them, is inaccurate. There are a number of parents and church members that do come to the plays and practices to support the children. Some parents can't read themselves, but send their children to tutoring. Some parents who can't dance send their children to dance classes. What makes the City of Asheville great is our diversity in attitudes and our goal to rise together, not as an individual. The goal of the Reid Center was to raise the roof, and if we look at the overall goal, the community members who signed on for the Raise the Roof Campaign, signed on for the renovation, not rehabilitation. They're saying you rehab what is yours and let us raise money for the expansion. To be honest, she would support allocating the $2-$8 Million for the Reid Center because it would be a long-term investment - a safe haven for our children. But, the plans are not in place and our new Parks & Recreation Director needs time to make that happen. Not only has Council (on a 6-1 vote) allocated $455,000 for the Reid Center, but added additional police officers, increased the pay for police officers, added new street lights and trash cans and has continued with our community walks. We are making a difference. We are working with the Housing Authority about how their future growth will take place. Incrementally, we have responded by a 6-1 vote. We have used our political capital to make a difference for this community. This initiative is truly the community's way and the community is helping drive this.

When Mayor Bellamy called for a vote on Councilwoman Cape's motion, which carried unanimously, Councilman Mumpower called for a point of order regarding proper procedure.

In response to Councilman Mumpower's point of order, City Attorney Oast said that there was no motion to call the question, but the Mayor had every right to call for a vote.

Vice-Mayor Jones moved to affirm the Mayor's role in being the convener and Order of Council. This motion was seconded by Councilman Freeborn.

Councilman Mumpower said this 6-1 Council has left an open air drug market in the Reid Center community and to pretend that if we create nice bricks and mortars and leave those children in harms way is doing them a favor is unethical. He is delighted to be on the one side of the 6-1 vote under those circumstances.

The motion made by Vice-Mayor Jones and seconded by Councilman Freeborn carried unanimously.

Councilman Mumpower moved for the adoption of Ordinance No. 3565. This motion was seconded by Vice-Mayor Jones and carried unanimously.

ORDINANCE BOOK NO. 24 - PAGE 283

VI. NEW BUSINESS:

A. RESOLUTION NO. 07-219 - RESOLUTION AUTHORIZING AGREEMENT TO ACQUIRE REAL PROPERTY ON MAPLE DRIVE

Mr. Roderick Simmons, Parks & Recreation Director said that this is the consideration of a resolution authorizing acquisition of property in the Haw Creek area for park purposes and a greenway link to Blue Ridge Parkway and Mountain to Sea trail.

The City has been approached by the State of North Carolina and the Haw Creek Neighborhood Association (represented by Chris Pelly) to consider participation with the neighborhood association, the State of North Carolina and Buncombe County in acquiring a 9-acre tract of land that extends from Maple Drive in the Haw Creek Area up to the Blue Ridge Parkway property.

The property is currently on the market and the proposal is for the neighborhood association to offer $750,000 for the property. One third of this amount is to come from Buncombe County, one third from the City, and one third from the neighborhood association. The property would be acquired by the neighborhood association (as a vehicle for charitable donations) and then conveyed to the City.

As the transaction is proposed, the City would have no obligation to contribute anything until the neighborhood association had assembled its part of the funds and was ready to acquire and transfer the property. The neighborhood association anticipates this being a two-year process. The purpose of this resolution is to secure the City's commitment, through an agreement with the neighborhood association, to contribute its share of the purchase price and take title to the property when the time comes.

While this proposal has been discussed with several members of Council individually, it just came to the attention of City staff on November 19, and there has been little opportunity to review the feasibility of the proposal (including obtaining an appraisal), and how it fits into the overall Parks and Recreation facilities and capital planning process.

The Greenway Commission has reviewed the proposal but has decided to delay a decision on the project. The Recreation Board has reviewed the proposal and voted to support the idea of preserving the land, but had questions about the availability of funding and how that would affect funding of other park projects.

If Council approves this, City staff will work with the neighborhood association and others, and the budget for 2008-09 and 2009-10 will include appropriations for this purpose.

Pros:
- Facilitates a link from City streets to Blue Ridge Parkway and Mountain to Sea Trail
- Increase inventory of park land

Cons:
- No other greenways or park facilities located nearby
- Little opportunity to evaluate proposal
- Limit funding for other park projects

If Council approves of this proposal, adoption of the resolution is recommended.

Mr. Chris Pelly, representative of the Haw Creek Neighborhood Association, gave City Council some statistics about Haw Creek, such as (1) population is 7,500 (10% of population in Asheville); (2) diverse community; (a) home values range from $100,000 – more than $2,000,000; and (b) churches; and (c) schools (Haw Creek Elementary and Evergreen Charter); and (3) active community association (a) Haw Creek Park; and (b) sidewalk on Avon.

Showing slides, he explained the ongoing development in Haw Creek.

The Haw Creek Community Association (1) is a 501 (c) (3) organization; (2) Neighborhood Association is open to all residents; (3) proactive; (4) goal of making Haw Creek and Asheville a better place to live and raise our families; and (5) history of working with developers and city government.

Success stories include (1) Haw Creek Park in 2001; (a) raised $50,000; and (b) Haw creek History Trail; (2) sidewalks for Avon and Trinity Chapel Road (partnership with the City of Asheville); and (3) organize community events (a) yard sales; (b) community bar-b-que dinners; (c) Children's Patriotic Bicycle Parade for Memorial Day; and (d) candidate's forum.

Regarding the Maple Drive property, there is a commitment to vibrant livable neighborhoods. There are 9 wooded acres connecting Haw Creek Valley to the Blue Ridge Parkway and the Mountains-to-the-Sea Trail.

The following shows project financing: Private Donors - $50,000; State of North Carolina - $75,000; City of Asheville (1/3 – not officially committed) - $250,000; Buncombe County (1/3 – not officially committed); Total tentative pledges - $625,000; Projected land costs - $750,000; Balance to close deal - $125,000.

He explained the Haw Creek Park effort to date.

He then explained the projected partners for active involvement – funding: Haw Creek Community Association (Lead); Haw Creek private donors; Conservation Trust for North Carolina, North Carolina State Trails Program; Asheville Parks & Recreation; Asheville City Council; and Buncombe County Commissioners.

The following project partners have been briefed and have provided supportive input: City of Asheville Planning Department; Asheville Greenway Commission; Asheville Parks & Greenway Foundation; Buncombe County Parks & Recreation Department; Pigeon River Trust Fund; Blue Ridge Parkway; and Southern Appalachian Highlands Conservancy.

Councilman Mumpower said this sounds like a good project, but his concern is that we can't keep up with what we have already.

Councilwoman Cape said that as we are seeing this active development in our community, how we can start putting aside a fund, or some dedicated percentage of the increase in property tax, for just these kinds of opportunities that come along. She asked staff to bring us some examples of what other cities are doing.

Councilman Freeborn moved to adopt Resolution No. 07-219, as follows: (1) The City Manager is authorized to enter into an agreement with Buncombe County and the Haw Creek Neighborhood Association for the acquisition of the Subject Property, said agreement to include the terms set out below: (a) Total cost of acquisition not to exceed $750,000, subject to appraisal; (b) Date of acquisition not later than December 31, 2009; (c) City's share in cost of acquisition not to exceed one third; (d) Title to property to be conveyed by general warranty deed, with any restrictions to be agreed to by the City; (e) Such other terms and conditions as meet with the approval of the City Attorney; and (f) Agreement shall terminate in the event of non-appropriation in the City's annual budget; (2) The City Manager is further directed to take appropriate steps to provide in the proposed annual budget for fiscal years 2008-09 and 2009-10 for the City's share of the acquisition cost; and (3) The City Manager is authorized to execute such other documents as may be necessary to give effect to this resolution. This motion was seconded by Vice-Mayor Jones.

Councilman Newman said that earlier today Council received a letter from some members of the Greenway Commission who were supportive of the project but also wrote about some potential ways to lower the total price of the project, (allowing some re-sale of some of the

property so we can get the connection). Two aspects were (1) the property itself and the open space values it provides recreationally and environmentally; and (2) the connection from the whole Haw Creek Neighborhood to the Blue Ridge Parkway and the whole network of public land.

Mr. Pelly said that they have always viewed that as a fall back position. But the fact of the matter is they are trying to preserve open spaces as well too. The part that would be developed, if that were the direction, would be the part that fronts on Maple Drive. If that were to happen, you would lose a lot of that open space quality to the property. Their goal is to preserve the entire site and if there is no other way, they will look at all options.

Councilman Newman's perspective would be to be more supportive of what the Greenway Commission outlined for the project. We are going through the process of updating the Greenway Plan city-wide. While we are developing our Greenway Plan and determining long-term financing mechanisms to expedite completion of greenway networks throughout the City, we also have to be opportunistic when these really good opportunities come up. However, our funding is limited. If there is a way to make this vital connection from Haw Creek to the Parkway which wouldn't require not quite as big of a financial commitment at this time, he would be supportive of that direction.

Mr. Pelly said that one of their options that they had considered also is the notion of asking the City to split any contribution over 2 years.

The motion made by Councilman Freeborn and seconded by Vice-Mayor Jones carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 31 – PAGE 38

B. APPROVAL FOR THE CITY OF ASHEVILLE TO ACT AS LEAD AGENCY ON A GRANT APPLICATION FOR SIDEWALK IMPROVEMENTS IN THE EMMA COMMUNITY

Metropolitan Planning Organization Coordinator Dan Baechtold said that staff is seeking permission from City Council to act as lead agency on a grant application for sidewalk improvements located just outside the City limits in the City's Extraterritorial Jurisdiction (ETJ).

Staff is prepared to assist the Emma community in pursuing a grant for sidewalk construction through the N.C. Dept. of Transportation (NCDOT) Safe Routes to School Program. This commitment would require the City to act as lead agency on the grant application, and to assume long-term maintenance of the project.

Emma Elementary school is one out of about 30 schools across the state that has been invited to apply for a Safe Routes to School demonstration grant. The grant would provide funding for infrastructure improvements and other programs aimed at improving conditions for children to walk or bicycle to school. The Safe Routes to School program is a federal program that is managed by the North Carolina Department of Transportation. The amount of the grant would be between $100,000 and $250,000. The grant does not require a local match. The grant application deadline is December 14, 2007.

A citizens group called "A Safer Walk for Emma" has been working for approximately three years to try to get sidewalks in the area. The roads near the school are narrow, two-lane roads that are rural in character. There are a number of manufactured housing communities and other neighborhoods that would be within a short walking distance of the school if conditions were safe. All of the children that go to Emma Elementary live within a two-mile radius of the school. Citizens with A Safer Walk for Emma have identified North Louisiana Avenue and Emma Road as the roads that most need sidewalks. This sidewalk network is vital not only for the school, but for the community as a whole to access shopping and services along Patton Avenue.

All of these roads have been identified as needed linkages in the City's Pedestrian Thoroughfare Plan of 2005. A majority of the sidewalk needs related to the school are just outside the City limits in the City's ETJ. Sidewalks are also needed within the City limits along North Louisiana Avenue. Staff has been working with the local community, Buncombe County, and NCDOT on possible partnership arrangements.

Staff recommends that the City enter into a cooperative agreement with Buncombe County on this project at a later date. NCDOT and other sources will be pursued for funding the improvements. The City of Asheville is the best entity to take the lead on the grant application because the other agencies involved are not in the business of building or maintaining sidewalks.

The grant does not require local matching funds, but staff time would be required to administer the grant. Most of the initial maintenance costs would be minimal, depending on the needs for mowing and vegetation removal.

Provide staff with permission to pursue a grant for sidewalk infrastructure improvements in the City's ETJ, with an understanding that the City will agree to maintain any sidewalk that is installed along the public roads.

The following individuals spoke in support of the City acting as lead agency on a grant application for sidewalk improvements in the Emma Community:

Mr. Craig White, member of A Safer Walk for Emma
Ms. Cathy Ledford, member of A Safer Walk for Emma
Ms. Leanna Joiner

Vice-Mayor Jones hoped that this will be a model for us to lean about safe school routes around the City and can duplicate it in other parts of our community.

Councilman Freebom moved to provide City staff with permission to pursue a grant for sidewalk infrastructure improvements in the Emma community, with an understanding that the City will agree to maintain any sidewalk that is installed along the public roads. This motion was seconded by Councilman Mumpower and carried unanimously.

C. RESOLUTION NO. 07-220 - RESOLUTION OF INTENT TO PARTNER WITH PUBLIC INTEREST PROJECTS ON A PUBLIC PARKING GARAGE ON BILTMORE AVENUE

Director of Transportation and Engineering Cathy Ball said that this is the consideration of a resolution of intent to partner with Public Interest Projects (PIP) to construct, maintain and operate a parking garage at 51 Biltmore Avenue with at least 300 public parking spaces. The City will in good faith continue to negotiate with PIP to this end.

PIP currently owns the surface parking lot at 51 Biltmore Avenue. PIP is in negotiations to sell/lease a portion of this lot for development. They plan to construct five hundred parking spaces. They would like to partner with the City of have 300 of the 500 spaces available for public use.

Staff and bond council would like to further analyze this recommendation prior to entering into a legally binding agreement with PIP.

Considerations of adopting a resolution authorizing the City Manager to execute this contract are as follows:

- **Pro:** According to the initial finding of the downtown parking study, this area has a deficit of public parking (600 to 700) spaces, indicating that the three hundred public parking spaces are needed in this area.
- **Pro:** Preliminary profit and loss estimates indicate that it is more cost effective for the City to partner with PIP than to construct, operate and maintain three hundred parking spaces on this piece of property without partnering.
- **Con:** The garage would be operated by PIP (although the City would control the number of monthly verses hourly parking spaces.)
- **Con:** The City is subsidizing the additional 200 parking spaces that PIP would control.

The consideration of a resolution of intent to partner with Public Interest Projects to construct, maintain and operate a parking garage at 51 Biltmore Avenue with at least three hundred public parking spaces. The City will in good faith continue to negotiate with PIP to this end.

Mr. Pat Whalen, representing Public Interest Projects, reviewed with Council a PowerPoint presentation on "Should we build a public/private parking garage on Biltmore Avenue?" He said (1) it seems to fill a number of public purposes; (2) there is no Biltmore Avenue public parking garage. Council has already recognized the problem; (3) he 51 Biltmore Avenue parking lot is centrally located in an area of downtown with a 600-700 car parking shortage; (4) Downtown parking decks have been one of the City's most powerful strategies; (5) City-built parking garages in the 1970's and 1980's helped move us; (6) parking decks encourage mixed-income residential development; (7) surface lots in the Central Business District can be put to better use with more structured parking; and (8) or 40 years a building stood vacant and the tax value in 1991 was $300,000. Today the building is valued at over $11,000,000 which is an increase of over 3500% in 15 years. This would not have happened without the adjacent parking garage.

Parking decks free up land for building and make renovation of historic buildings and new buildings feasible, even with no parking. They support local storefront retail and office construction. They help make possible a wider range of housing downtown. Asheville's revitalization would never have happened without the parking garages.

A purely private project on this site would not provide public parking. A purely public project on this site would be too expensive and miss the opportunity to provide for other complementary uses.

A public/private garage at this site will (1) save money for the City and its taxpayers over the cost of owning and operating a purely public garage; (2) allow more parking to be built more cost effectively than either party could do independently; (3) allow us to make efficient multiple uses of the same spaces; and (4) reduce barriers to new businesses locating downtown and decrease sprawl pressure for outlying office parks and subdivisions.

Encouraging development at the center is the greenest form of development, reducing overall need to drive, encouraging walking, and reducing unsheltered paving and its toxic runoff. Mixed-uses on this site will maximize its beneficial effect on the adjacent areas downtown over any single purpose use. Lining the facades with mixed active uses will re-knit the downtown pedestrian fabric along Biltmore and Lexington, making downtown even more pedestrian-friendly. Improving parking availability in this very visible location will make parking easier to find for visitors.

Potential additional benefits and opportunities include (1) move by the City to the forefront on smart growth/green development issues by (a) utilizing location – efficient affordability standards for workforce housing; (b) developing special workforce-friendly downtown transit package; (c) encouraging more workforce housing development through preferential parking

rights; (d) developing a joint city/private car-sharing program; and (e) developing elevated, publicly-accessible green space.

The preliminary plan is (1) deck size – 500 spaces total; (2) 300 public spaces – 200 quasi-private; (3) City leases land and owns deck; (4) PIP design-builds and manages deck; (5) City obtains financing for deck - tax-free bonds for City spaces – taxable for quasi-private spaces; (6) PIP leases back from City the 200 quasi-private spaces; (7) Biltmore liner building – private sector hotel project subsidizes land cost; and (8) Lexington liner building – PIP workforce housing.

PIP welcomes the opportunity to work with the City on this project but time is of the essence: (1) difficult to coordinate public process with private sector time limits; (2) one of few downtown sites combining proximity to local businesses, ease of access, no destruction of the historic fabric, and cooperative owner; and (3) window of opportunity may close potentially resulting in years of additional delay in getting parking for this area of downtown.

The next steps would need agreement in principle and direction to staff to work out details of transaction and report back for final approvals.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Newman moved for the adoption of Resolution No. 07-220. This motion was seconded by Councilwoman Cape.

In response to Councilwoman Cape, Mr. Whalen said that they want to pursue many of the potential benefits and opportunities outlined.

City Attorney Oast stated that this action is approval for the City to continue the conversation with PIP and this does not bind Council with respect to any future approvals that might come before Council, either zoning, budgetary, or any other way.

In response to Vice-Mayor Jones, Mr. Whalen said that the City will receive the revenue from all parking spaces.

The motion made by Councilman Newman and seconded by Councilwoman Cape carried unanimously.

RESOLUTION BOOK NO. 31 – PAGE 40

D. RESOLUTION NO. 07-221 - RESOLUTION TO DISPOSE OF THE CITY'S INTEREST IN 7.19 ACRES OF REAL PROPERTY AT BROTHERTON AND VIRGINIA AVENUES

Real Estate Manager Nikki Gunter said that this is the consideration of a resolution to dispose of the City's interest in 7.19 acres of real property at Brotherton and Virginia Avenues.

In 1999, the City acquired 7.19 acres at Brotherton Avenue, for the purpose of creating affordable housing. The City invested a total of $527,000 in Community Development Block Grant (CDBG) funds to acquire and improve the site. In two previous instances, potential developers have withdrawn for financial reasons before constructing any housing.

Presently, the City has received an offer from the Asheville Area Habitat for Humanity to develop 22 single family homes on this site, all to be sold to low-income families. Habitat has delivered a letter of intent to the City stating its desire to purchase the property for the sum of $467,500. This offer equals the value indicated in an appraisal performed for the City in June

2007. Habitat proposes to pay a $5,000 deposit and the balance of $462,500 will be represented by a promissory note at closing, payable in one lump sum 10 years from the closing date, at zero percent interest and may be prepaid at any time without penalty. If accepted, the City of Asheville will hold a Deed of Trust for the note. A reversionary clause or similar deed restriction will secure compliance with the commitment to build only affordable housing units.

Pros:

- Development of 22 affordable homes for purchase by low-income families supports the City's Strategic Plan goals for addressing housing needs.
- In-fill development matching established density for the area supports Smart-Growth land policies.
- Habitat has an excellent track record of building high quality, Energy Star homes;
- Habitat offers 0% interest mortgages, making its homes the most affordable new homes available;
- Agency has sufficient financial and volunteer resources to complete the project;
- Returns the property to the tax rolls with tax base increase of at least $2,500,000.

Cons:

- Terms offered provide less return to the Community Development Block Grant fund than a sale on the open market;
- Habitat will not start housing construction on the site until late 2009.

Staff recommends approval of the offer and adoption of the resolution.

A representative of Habitat for Humanity spoke in support of the resolution and believed they will succeed in this endeavor.

Councilwoman Cape spoke in support of this action in that this is a proven organization with community support.

In response to Councilman Newman, Ms. Gunter explained in detail the terms.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Cape moved for the adoption of Resolution No. 07-221. This motion was seconded by Councilman Mumpower and carried unanimously.

RESOLUTION BOOK NO. 31 – PAGE

E. PROPOSAL BY THE ASHEVILLE MERCHANTS CORPORATION FOR THE CITY OF ASHEVILLE TO ACCEPT THE MANAGEMENT AND OPERATION OF THE ASHEVILLE HOLIDAY PARADE

Ms. Melissa Porter, Events Coordinator, said that this is the consideration of a proposal by the Asheville Merchants Corporation for the City of Asheville to accept the management and operation of the Asheville Holiday Parade.

The Asheville Merchants Corporation has operated the Asheville Holiday Parade in partnership with the City of Asheville for 60 years making it the area's most popular holiday event

and drawing thousands of people to downtown Asheville. The Asheville Merchants Corporation traditionally provides resources for event management and operation, while the City provides logistical support via parks and recreation, building safety, parking services, police, fire and public works.

The Asheville Merchants Corporation anticipates a continued presence in the Asheville Holiday Parade, but its focus has evolved in recent years and no longer has the resources to continue as the lead organizer of the parade. As part of the transition to the City, the Asheville Merchants Corporation will commit to an annual sponsorship of $20,000 for the first four years of operation by the City of Asheville.

Parks and Recreation staff has researched the proposal resulting in the following conclusions.

Financial Review: After testing the parade for potential sponsor interest and after a review of the proposed five-year parade financial plan, Parks and Recreation and Finance staff are confident the parade will support itself for direct operating cost. She referenced a Asheville Holiday Parade financial analysis that demonstrates projected revenue and expense for both direct and indirect operating cost.

Events Task Team Review: The City of Asheville's current annual logistical support for the parade in parks and recreation, building safety, parking services, police, fire and public works is valued at $20,461, which would continue in the event the parade is managed by the City.

The parade has significant logistical needs which require a considerable amount of planning with state, county and private agencies. The presence of private residences in the downtown area calls for additional safety and security needs. Special consideration and planning is necessary for roadway requirements and emergency services.

Public Review: Parks and Recreation staff and the Asheville Merchants Corporation hosted a public meeting on November 1, 2007, attended by 12 citizens. While most were in favor of the City of Asheville taking over parade management, two people voiced their opinion on calling it the Christmas Parade rather than Holiday Parade.

Legal Review: Government sponsored parades on public streets are activities that have significant implications under the First Amendment of the U.S. Constitution. With respect to the criteria for selection of participants, care will need to be taken to ensure that the opportunity to participate in the parade is equally available to all citizens and organizations. These concerns are not as significant for non-governmental sponsors and organizations.

Recreation Board Review: The Recreation Board reviewed the parade proposal at its regular meeting on May 14, 2007 and approved the request, and recommends acceptance of the parade by the City of Asheville.

Staffing: Parade management is an appropriate match in the Parks and Recreation Department via the festival division since it has expertise in both special event management and fundraising via sponsorships. The festival division currently consists of four full-time and one part-time staff. To absorb parade management, it is recommended to convert the one part-time position to full-time to be responsible for parade management plus assist with all other events within the festival division.

Pros:

- Provide support and management for long-term sustainability of the parade
- Provide expert event management
- Develop positive sponsorship investment opportunities
- Increase revenue in the Festival Fund to offset increase cost to support parade operations

Cons:

- Expand the Festival Fund operating budget by $10,000 in salary cost, although the amount will be offset by increased revenue
- Timing of the event will be challenging for existing staff responsibilities since the same staff is responsible for the production of the Asheville Film Festival which occurs one week prior to the parade.
- Extra considerations for increased state regulations and presence of downtown private residencies in administering parade logistics
- Public opinion to change the name of the parade from Holiday Parade to Christmas Parade

The Parks and Recreation Department requests City Council to provide direction regarding the City of Asheville accepting management and operation of the Asheville Holiday Parade.

Councilwoman Cape moved for the City of Asheville to accept management and operation of the Asheville Holiday Parade. This motion was seconded by Councilman Davis.

Throughout discussion, Ms. Porter responded to various questions/comments from Council, some being, but are not limited to: what is the budget for Light Up Your Holidays; what are sponsorship opportunities; and explanation of the financial analysis that demonstrates projected revenue and expense for both direct and indirect operating costs.

In response to Councilman Davis, Mr. Tom Hallmark, President of the Asheville Merchants Association, said that they have not asked any other agencies or clubs to manage and operate the Asheville Holiday Parade, other than the City of Asheville.

Councilman Mumpower didn't believe the City should be involved in managing and operating parades and would speak against the motion.

Councilwoman Cape feels that the Asheville Holiday Parade is more of a community draw, not aimed at tourists as other festivals the City sponsors. For some, the Parade is the only opportunity for children to express themselves (dancers) in front of the entire community. She did feel there will be sponsors and we can build on the creativity of the Parade.

Mayor Bellamy asked for a friendly amendment to the motion for the City to have a Council-appointed Parade Committee for direct accountability and oversight. This amendment was accepted by Councilwoman Cape and Councilman Davis.

Regarding the budget, Mayor Bellamy felt we needed information on how the Parade could break even and that we are clear on our expectations. As we move forward, we need to be clear in our budget documents.

Mayor Bellamy was not completely comfortable with the City taking over the Asheville Holiday Parade. She suggested Council delay action on this item until other organizations are contacted to see if they would like to take over the management and operation of the Parade. She suggested contacting the Chamber of Commerce, Rotary Club or Kiwanis.

Councilman Davis agreed with Mayor Bellamy and felt the operation may best be left to a non-profit or a private entity to run with the City participating as it has in the past.

In response to Vice-Mayor Jones, Ms. Porter said that most parades are run by private companies or private organizations. She would be happy to provide more detail information to Council.

City Attorney Oast responded to Council's questions regarding legal issues.

Councilwoman Cape withdrew her motion in order for additional information to be brought forth.

It was the consensus of Council for staff to bring back the additional information requested in approximately 30 days. Mayor Bellamy suggested other organizations be contacted, such as the Better Business Bureau, Chamber of Commerce, Interfaith Coalition, etc. to see if there are other opportunities to partner in this endeavor, with the City participating as it presently does.

F. GREENLIFE CONDITIONAL ZONING APPLICATION UPDATE

Interim Planning & Development Director Shannon Tuch said that this report serves to provide a status report for the GreenLife Conditional Zoning application.

On August 28, 2007, the Asheville City Council considered a resolution to install traffic calming devices on Maxwell Street in an effort to control undesirable truck traffic that was occurring as a result of the loading dock activities from GreenLife grocery.

As an alternative to traffic calming, the owner/manager for GreenLife committed to pursuing an option that would expand the GreenLife property in order to reconfigure the store's loading dock area. This reconfiguration, if approved, would allow all large trucks visiting GreenLife to maneuver entirely within the store's property boundary with ingress and egress occurring on Merrimon Avenue only; smaller trucks would continue to utilize Maxwell Street and the current loading dock area located on the west side of the store. Additionally, the re-configuration could be accomplished in such a way as to afford additional improvements to landscape buffers.

This alternative would require a Conditional Zoning application to rezone the adjacent residential property and to review the Master Plan associated with the loading dock re-configuration.

Analysis: All conditional zoning applications are required to begin the process with a pre-application conference. This is the first step in the application process and is critical to effectively communicate the specific requirements of the application and any special materials that may or may not be necessary for evaluation of the stated proposal. Additionally, this conference also provides the opportunity for the applicant to solicit feedback on a proposal from the various technical reviewers and approximately half of all pre-application conferences share a site plan to better focus the conversation and technical feedback. To make the most of this conference, applicants are offered the option of attending the Technical Review Committee (TRC) meeting to be able to garner input from all of the technical reviewers at the same time and gain a better understanding of the relationship between the various standards.

Equally common are private pre-application meetings where the applicant will sit down with a few city staff for a more focused discussion. GreenLife grocery conducted a private pre-application meeting on Tuesday, November 13th where representatives of GreenLife (owner, landscape architect, architect, construction manager) met with City staff (traffic engineering, planning, building safety, public works, and fire marshal's office) to discuss the particulars of their application requirements. A few different site plan scenarios were discussed along with the pertinent technical requirements. Specific issues discussed included:

- Possible stormwater detention requirements
- Pervious paving requirements
- Parking requirements
- Impact on traffic

Councilwoman Cape withdrew her motion in order for additional information to be brought forth.

It was the consensus of Council for staff to bring back the additional information requested in approximately 30 days. Mayor Bellamy suggested other organizations be contacted, such as the Better Business Bureau, Chamber of Commerce, Interfaith Coalition, etc. to see if there are other opportunities to partner in this endeavor, with the City participating as it presently does.

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- Possible stormwater detention requirements
- Pervious paving requirements
- Parking requirements
- Impact on traffic

- Changes to driveway locations
- Landscape requirements
- Minor changes to loading docks
- Improvements that would trigger new requirements
- Relocation of existing single family home (how and where?)
- Other related and necessary permits

Also discussed in some detail was the timeline for the overall application process; of particular concern to the applicant was the interest in moving the application too quickly. The concern stems primarily from the fact that GreenLife does not own the property that the store sits on and also does not own the adjacent residential parcel and gaining consensus from all of the different stakeholders creates logistical challenges (if GreenLife is not the owner of the property then an Owner's Affidavit must be obtained before application can be made). Additionally, given the investment in proposed re-design the applicant wishes to explore all options for re-development, including possible future needs, and carefully consider the pros and cons for each. Despite these challenges, the GreenLife representatives expressed interest in moving forward as quickly as possible and hope to have the owner's affidavit and a conceptual site plan to share at the meeting on November 27th.

She said that a conceptual plan has been submitted to not just come up with a plan to reconfigure the loading area, but to do a long-term master plan. These are very conceptual plans and they have only been received early this afternoon. It is also her understanding that the property owners haven't had time to consider the latest plans either so there is still some need for discussion between the owners and the representatives of Greenlife.

She then reviewed in detail the conceptual plan. She said it is a three-phased development plan. Phase I is the reconfiguration of the loading dock areas. The only drawback to this development plan that she could identify is that if we conditionally rezone this property to a commercial designation, our new landscape standards now establish vegetative buffers between dissimilar zoning districts. We would normally require a 30-foot vegetated buffer between one of the parcels and the adjacent single family homes. In order to have the maneuvering room that they require for the trucks and also to provide a small amount of parking that they lose with this reconfiguration, it would necessitate the narrowing of that required buffer from 30 feet to approximately 5-10 feet with an opaque privacy fence. The buffer would be against the people who own the larger property, so their approval would be garnered at the beginning of this process.

She explained how Phase II focuses on construction of a new parking deck. Then, she explained how Phase III includes a building addition.

She said that it appears to be a substantial good faith effort to develop the concept plans. No application made at this time, but this is very typical of a conditional zoning process and this is what we would expect to see at this point.

Mr. Joe Minicozzi, President of the Coalition of Asheville Neighborhoods, questioned why the City is not adhering to Chapter 7, Article VIII, Section 7-18-03 regarding notice of violation and citation procedure. He presented the City Clerk with a copy of a letter dated August 14, 2007, stating that he has not received a response as of this date.

In response to Mayor Bellamy, Ms. Tuch said that Staples and Greenlife have valid permits to operate.

In response to Councilman Newman, Ms. Tuch said that the conditional zoning will be received by the TRC, Planning & Zoning Commission, City Council, and then back to the TRC.

In response to Councilwoman Cape, Mr. John Swann, one of the owners of Greenlife, said that they do have full support of management for this conceptual plan.

Councilman Newman hoped to see continued forward progress on this issue. He said that if the plans are not submitted within 45 days, he suggested Council revisit the issue again.

VII. OTHER BUSINESS:

A. PRIMARY ELECTION RESULTS – CITY OF ASHEVILLE – OCTOBER 9, 2 GENERAL ELECTION RESULTS – CITY OF ASHEVILLE – NOVEMBER 6, 2007

Attached hereto as Exhibit "A" is the abstract containing the number of legal votes in the Primary Election, City of Asheville, held on October 9, 2007. Also attached as Exhibit "B" is the abstract containing the number of legal votes cast in the General Election, City of Asheville, held on November 6, 2007.

B. CERTIFICATE OF REFERENDUM

Attached hereto as Exhibit "C" is the Buncombe County, North Carolina, Certificate of Referendum Results for the City of Asheville, which said referendum was held at the General Election held on the 6th day of November, 2007. "This is to certify that the question posed before the voters of Asheville amending the Asheville City Charter and changing the manner of election of the mayor and city council from non-partisan to partisan has been rejected."

C. RECOUNT OF NOVEMBER 6, 2007, GENERAL ELECTION RESULTS

Attached hereto as Exhibit "D" is the Buncombe County, North Carolina, Municipal Election, held on November 6, 2007, recount held on November 16, 2007. In addition, attached hereto as Exhibit "E" is the sample recount of November 26, 2007.

D. CLAIMS

The following claims were received by the City of Asheville during the period of October 19-November 1, 2007: Westall-Chandley (Planning), Jerrell Deaver (Parks & Recreation), Hunter Cosgrove (Streets), Anita Irby (Streets) and Matthew Wall (Streets). These claims have been referred to Asheville Claims Corporation for investigation.

E. LAWSUITS

The City received a Complaint on November 7, 2007, as follows: Terry L. Edgerton v. Florindo Forero and the City of Asheville. This matter will be handled by an attorney outside of the City Attorney's Office.

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 10:35 p.m.

Kesiha Lipe
CITY CLERK

Terry M Bellamy
MAYOR

OFFICIAL RESULTS FOR MUNICIPAL ELECTION OF BUNCOMBE COUNTY

Election Date: 10/09/2007 **10/09/2007 MUNICIPAL PRIMARY**

355

ASHEVILLE CITY COUNCIL

Precinct	Donna Bateman	Steve Bledsoe	Dwight Butner	Christopher Chiaromonte	Jan Davis	(Continued..)
01.1	22	10	48	3	85	
02.1	7	10	54	19	159	
03.1	6	13	67	15	132	
04.1	12	16	98	3	180	
05.1	6	36	247	10	340	
06.1	5	25	91	3	100	
07.1	7	7	42	6	133	
08.1	9	9	44	1	100	
09.1	18	13	51	3	83	
10.1	4	4	14	1	61	
11.1	7	4	6	10	47	
12.1	10	16	27	8	89	
13.1	7	20	34	6	97	
14.2	6	6	18	4	68	
14.3	4	3	19	2	36	
15.1	9	22	60	14	138	
16.1	19	15	52	7	129	
17.1	8	15	98	4	160	
18.1	18	38	157	5	188	
19.1	2	12	51	3	48	
20.1	3	10	39	4	56	
21.1	13	53	103	8	176	
22.1	7	30	107	6	156	
23.1	6	23	73	7	95	
24.1	10	23	61	0	109	
25.1	7	18	60	2	86	
26.1	3	10	53	4	86	
27.1	7	12	118	5	154	
28.1	4	9	80	5	134	
29.1	11	30	78	3	147	
43.1	2	0	0	0	2	
44.1	0	1	2	0	3	
45.1	0	0	2	2	2	
54.1	3	1	15	0	15	
55.1	0	3	4	0	2	
56.1	3	2	13	0	16	
57.1	0	0	0	0	2	
60.3	1	0	4	0	10	

Exhibit A

ASHEVILLE CITY COUNCIL

Precinct	Donna Bateman		Steve Bledsoe		Dwight Butner		Christopher Chiaromonte		Jan Davis		(Continued..)
62.1	0		0		6		0		10		
71.1	1		4		12		0		10		
ABSENTEE	0		0		0		0		0		
CURBSIDE	0		0		0		0		0		
PROVISIONAL	0		0		0		0		0		
TRANSFER	0		0		1		2		3		
Totals	267	1.21%	523	2.37%	2,109	9.57%	175	0.79%	3,647	16.55%	

OFFICIAL RESULTS FOR MUNICIPAL ELECTION OF BUNCOMBE COUNTY

Election Date: 10/09/2007 10/09/2007 MUNICIPAL PRIMARY

ASHEVILLE CITY COUNCIL (Continued)

Precinct	Bryan Freeborn	Matthew Hebb	Bobby Johnston	Elaine Lite	William C. Meredith	(Continued..)
01.1	56	10	4	53	16	
02.1	220	14	10	200	33	
03.1	175	21	5	169	27	
04.1	121	19	13	98	10	
05.1	153	68	47	131	26	
06.1	56	23	20	50	9	
07.1	152	25	25	183	13	
08.1	98	21	19	43	9	
09.1	86	39	30	58	25	
10.1	43	5	4	21	2	
11.1	41	6	6	43	5	
12.1	99	17	24	103	11	
13.1	91	28	40	92	21	
14.2	86	25	21	62	10	
14.3	21	5	6	17	6	
15.1	161	26	34	133	29	
16.1	131	39	48	110	14	
17.1	108	35	32	115	11	
18.1	78	70	69	80	21	
19.1	11	16	18	10	1	
20.1	52	6	10	68	11	
21.1	79	41	58	108	25	
22.1	73	36	35	111	17	
23.1	36	21	32	35	7	
24.1	53	38	42	35	12	
25.1	78	62	47	51	19	
26.1	63	13	18	55	10	
27.1	77	19	23	98	8	
28.1	102	21	12	112	19	
29.1	89	60	50	63	9	
43.1	0	0	0	0	0	
44.1	3	3	2	2	4	
45.1	1	2	2	2	4	
54.1	3	6	2	5	2	
55.1	2	0	2	0	2	
56.1	6	4	2	9	1	
57.1	1	0	0	0	0	
60.3	6	1	0	6	2	

ASHEVILLE CITY COUNCIL (Continued)

Precinct	Bryan Freeborn		Matthew Hebb		Bobby Johnston		Elaine Lite		William C. Meredith		(Continued..)
62.1	2		1		1		3		0		
71.1	5		1		0		6		0		
ABSENTEE	0		0		0		0		0		
CURBSIDE	0		0		0		0		0		
PROVISIONAL	0		0		0		0		0		
TRANSFER	9		2		0		4		1		
Totals	2,727	12.37%	849	3.85%	813	3.69%	2,544	11.54%	452	2.05%	

OFFICIAL RESULTS FOR MUNICIPAL ELECTION OF BUNCOMBE COUNTY

Election Date: 10/09/2007 **10/09/2007 MUNICIPAL PRIMARY**

ASHEVILLE CITY COUNCIL (Continued)

Precinct	Brownie Newman	Bill Russell	Lindsey Simerly	Selina D. Sullivan	Dee Williams	Totals
01.1	77	42	9	29	48	512
02.1	279	41	64	42	90	1,242
03.1	200	52	37	18	56	993
04.1	178	95	18	5	22	888
05.1	204	254	12	33	38	1,605
06.1	84	72	8	6	27	579
07.1	185	60	12	20	49	919
08.1	107	50	14	34	92	650
09.1	92	66	13	16	32	625
10.1	60	14	9	43	62	347
11.1	53	14	19	25	45	331
12.1	132	36	20	14	25	631
13.1	115	59	20	23	27	680
14.2	96	56	11	29	32	530
14.3	22	18	5	8	11	183
15.1	160	89	31	19	44	969
16.1	141	84	25	24	24	862
17.1	134	110	17	18	23	888
18.1	100	224	10	13	35	1,106
19.1	23	67	3	8	13	286
20.1	62	22	11	7	31	392
21.1	124	120	17	24	40	989
22.1	107	126	10	7	22	850
23.1	49	79	4	17	13	497
24.1	56	87	3	7	19	555
25.1	87	87	12	21	13	650
26.1	66	42	22	16	25	486
27.1	114	99	10	12	14	770
28.1	149	67	18	8	22	762
29.1	113	121	9	15	28	826
43.1	1	0	1	0	0	6
44.1	4	3	0	0	0	27
45.1	1	1	2	0	0	21
54.1	4	16	0	2	1	75
55.1	2	3	0	0	1	21
56.1	12	16	5	3	5	97
57.1	2	0	0	1	0	6
60.3	8	2	4	1	4	49

ASHEVILLE CITY COUNCIL (Continued)

Precinct	Brownie Newman		Bill Russell		Lindsey Simerly		Selina D. Sullivan		Dee Williams		Totals
62.1	10		3		1		0		1		38
71.1	7		12		2		1		0		61
ABSENTEE	0		0		0		0		0		0
CURBSIDE	0		0		0		0		0		0
PROVISIONAL	0		0		0		0		0		0
TRANSFER	8		1		2		2		2		37
Totals	3,428	15.55%	2,410	10.93%	490	2.22%	571	2.59%	1,036	4.70%	22,041

MUNICIPAL ELECTION

October 9, 2007

ABSTRACT OF VOTES
FOR
FEDERAL, STATE AND COUNTY OFFICERS
FOR
BUNCOMBE COUNTY, NC

INSTRUCTIONS

THREE COPIES are to be made. One copy is to be signed by the County Board of Elections and delivered by them, when the canvass is concluded, to the City Clerk. One copy is to be retained by the County Board of Elections. One copy is to be mailed on canvass day to the Chairman of the State Board of Elections, Raleigh, North Carolina.

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

The County Board of Elections for said county, having opened, canvassed, and judicially determined the original returns of the election in the precincts in this county, held as above stated, do hereby certify that the above is a true abstract thereof, and contains the number of legal ballots cast in each precinct for each office named, the name of each person voted for, their party affiliation, and the number of votes cast for each person for the office named.

This the 16th day of October, 2007

Chairman of the BUNCOMBE County Board of Elections, who, being duly sworn, says the abstract of votes herein contained is true and correct, according to the returns made to said Board.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal, this the 12th day of October, 2007

(Seal)

My Commission (if any) Expires: 8/21/2010

OFFICIAL RESULTS FOR MUNICIPAL ELECTION OF BUNCOMBE COUNTY

Election Date: 11/06/2007 **11/06/2007 MUNICIPAL GENERAL**

ASHEVILLE CITY COUNCIL

Precinct	Dwight Butner	Jan Davis	Bryan Freeborn	Elaine Lite	Brownie Newman	(Continued..)
04.1	175	331	215	181	287	
05.1	521	661	268	267	382	
06.1	202	225	136	153	200	
01.1	86	183	147	129	174	
02.1	136	296	460	410	533	
03.1	127	244	313	293	355	
07.1	127	227	278	282	311	
08.1	206	250	240	147	248	
09.1	172	227	167	146	220	
10.1	53	118	104	83	117	
11.1	35	89	104	89	125	
12.1	123	168	219	202	242	
13.1	114	190	219	195	236	
14.2	95	171	163	135	177	
14.3	54	75	41	32	46	
15.1	201	311	305	239	316	
16.1	206	270	260	229	277	
17.1	209	308	185	196	233	
18.1	382	468	139	160	224	
19.1	103	110	26	20	27	
20.1	67	89	88	98	105	
21.1	300	365	245	179	266	
22.1	213	294	153	164	186	
23.1	177	207	71	73	122	
24.1	186	222	84	75	100	
25.1	224	272	150	110	183	
26.1	117	169	103	88	100	
27.1	189	271	161	183	207	
28.1	159	242	227	217	281	
29.1	251	375	159	148	223	
43.1	7	11	2	5	6	
44.1	8	12	4	5	5	
45.1	3	6	3	3	4	
54.1	40	53	16	19	20	
55.1	6	5	2	4	2	
56.1	36	55	16	25	29	
57.1	0	1	4	1	2	
60.3	23	31	12	21	20	

Exhibit B

ASHEVILLE CITY COUNCIL

Precinct	Dwight Butner		Jan Davis		Bryan Freeborn		Elaine Lite		Brownie Newman		(Continued..)
62.1	16		21		10		9		15		
71.1	23		25		9		8		12		
ABSENTEE	0		0		0		0		0		
CURBSIDE	0		0		0		0		0		
PROVISIONAL	0		0		0		0		0		
TRANSFER	8		11		17		15		19		
Totals	5,380	15.03%	7,659	21.40%	5,505	15.38%	5,038	14.07%	6,637	18.54%	

ASHEVILLE CITY COUNCIL (Continued)

Precinct	Bill Russell	Totals
04.1	202	1,391
05.1	518	2,617
06.1	173	1,089
01.1	92	811
02.1	115	1,950
03.1	120	1,452
07.1	114	1,339
08.1	189	1,280
09.1	197	1,129
10.1	58	533
11.1	37	479
12.1	102	1,056
13.1	120	1,074
14.2	112	853
14.3	62	310
15.1	203	1,575
16.1	203	1,445
17.1	218	1,349
18.1	464	1,837
19.1	116	402
20.1	58	505
21.1	292	1,647
22.1	228	1,218
23.1	173	823
24.1	208	875
25.1	231	1,170
26.1	121	698
27.1	186	1,197
28.1	145	1,271
29.1	333	1,489
43.1	7	38
44.1	10	44
45.1	5	24
54.1	51	199
55.1	7	26
56.1	44	205
57.1	2	10
60.3	23	130

ASHEVILLE CITY COUNCIL (Continued)

Precinct	Bill Russell		Totals
62.1	16		87
71.1	20		97
ABSENTEE	0		0
CURBSIDE	0		0
PROVISIONAL	0		0
TRANSFER	4		74
Totals	5,579	15.58%	35,798

Election Date: 11/06/2007 **11/06/2007 MUNICIPAL GENERAL**

Asheville Charter Amendment

Precinct	Yes	No	Totals
01.1	53	226	279
02.1	146	491	637
03.1	86	380	466
04.1	89	370	459
05.1	156	714	870
06.1	64	295	359
07.1	114	331	445
08.1	93	297	390
09.1	74	311	385
10.1	42	135	177
11.1	39	123	162
12.1	75	279	354
13.1	70	291	361
14.2	62	220	282
14.3	26	78	104
15.1	112	414	526
16.1	98	394	492
17.1	78	377	455
18.1	106	536	642
19.1	23	116	139
20.1	35	140	175
21.1	113	430	543
22.1	70	352	422
23.1	52	218	270
24.1	57	231	288
25.1	78	315	393
26.1	36	203	239
27.1	65	328	393
28.1	74	359	433
29.1	97	409	506
43.1	5	7	12
44.1	6	9	15
45.1	2	6	8
54.1	11	59	70
55.1	0	7	7
56.1	17	48	65
57.1	2	2	4
60.3	10	35	45

Asheville Charter Amendment

Precinct	Yes		No		Totals
62.1	6		22		28
71.1	6		26		32
ABSENTEE	0		0		0
CURBSIDE	0		0		0
PROVISIONAL	0		0		0
TRANSFER	9		18		27
Totals	2,357	19.71%	9,602	80.29%	11,959

369

Election Date: 11/06/2007 11/06/2007 MUNICIPAL GENERAL

MAYOR TOWN OF WOODFIN

Precinct	M. Jerry VeHaun		Totals
42.1	1		1
68.1	4		4
69.1	7		7
70.1	93		93
71.1	16		16
ABSENTEE	0		0
CURBSIDE	0		0
PROVISIONAL	0		0
TRANSFER	0		0
Totals	121	100.00%	121

COMMISSIONERS BILTMORE FOREST

Precinct	Charles W. Grimes		E. Glenn Kelly		Doris P. Loomis		Totals
31.1	114		118		116		348
ABSENTEE	0		0		0		0
CURBSIDE	0		0		0		0
PROVISIONAL	0		0		0		0
TRANSFER	0		0		0		0
Totals	114	32.76%	118	33.91%	116	33.33%	348

MAYOR BILTMORE FOREST

Precinct	George F. Goosmann, III		Totals
31.1	115		115
ABSENTEE	0		0
CURBSIDE	0		0
PROVISIONAL	0		0
TRANSFER	0		0
Totals	115	100.00%	115

MONTREAT TOWN COMMISSIONERS

Precinct	Wade DuBose Burns		O'Neil Tate		John (Jack) McCaskill		Totals
36.1	87		141		135		363
ABSENTEE	0		0		0		0
CURBSIDE	0		0		0		0
PROVISIONAL	0		0		0		0
TRANSFER	0		0		0		0
Totals	87	23.97%	141	38.84%	135	37.19%	363

OFFICIAL RESULTS FOR MUNICIPAL ELECTION OF BUNCOMBE COUNTY

Election Date: 11/06/2007 **11/06/2007 MUNICIPAL GENERAL**

ALDERMAN TOWN OF BLACK MOUNTAIN

Precinct	Ruth Brandon	Joan G. Brown	Don Farrow	Bob Gunn	Michael Sobol	(Continued..)
32.1	0	0	0	0	0	
33.2	201	167	119	141	189	
33.3	259	206	87	123	189	
34.1	175	158	96	109	186	
35.1	254	365	206	182	287	
ABSENTEE	0	0	0	0	0	
CURBSIDE	0	0	0	0	0	
PROVISIONAL	0	0	0	0	0	
TRANSFER	0	0	0	0	0	
Totals	889 20.42%	896 20.58%	508 11.67%	555 12.75%	851 19.55%	

ALDERMAN TOWN OF BLACK MOUNTAIN (Continued)

Precinct	Ryan Stone		Totals
32.1	0		0
33.2	143		960
33.3	167		1,031
34.1	177		901
35.1	167		1,461
ABSENTEE	0		0
CURBSIDE	0		0
PROVISIONAL	0		0
TRANSFER	0		0
Totals	654	15.02%	4,353

Election Date: 11/06/2007 11/06/2007 MUNICIPAL GENERAL

375

WOODFIN WATER AND SEWER

Precinct	William Arbogast		Henry Chandler		James Latimore		Margie Meares		Totals
05.1	71		182		190		185		628
27.1	0		0		0		0		0
28.1	2		1		5		5		13
70.1	20		73		71		66		230
71.1	1		1		2		4		8
ABSENTEE	0		0		0		0		0
CURBSIDE	0		0		0		0		0
PROVISIONAL	0		0		0		0		0
TRANSFER	0		0		1		0		1
Totals	94	10.68%	257	29.20%	269	30.57%	260	29.55%	880

ALDERMAN TOWN OF WOODFIN

Precinct	James (Jim) Angel		Donald H. Honeycutt, Jr.		Geneva Ammons Maney		Totals
42.1	1		1		1		3
68.1	4		2		4		10
69.1	7		7		7		21
70.1	77		90		83		250
71.1	15		12		14		41
ABSENTEE	0		0		0		0
CURBSIDE	0		0		0		0
PROVISIONAL	0		0		0		0
TRANSFER	1		1		1		3
Totals	105	32.01%	113	34.45%	110	33.54%	328

377

Election Date: 11/06/2007 **11/06/2007 MUNICIPAL GENERAL**

MAYOR TOWN OF BLACK MOUNTAIN

Precinct	E. Andy Andrews		Carl Bartlett		Tim Jennings		Totals
32.1	0		0		0		0
33.2	118		235		22		375
33.3	139		240		26		405
34.1	117		220		17		354
35.1	264		276		20		560
ABSENTEE	0		0		0		0
CURBSIDE	0		0		0		0
PROVISIONAL	0		0		0		0
TRANSFER	0		0		0		0
Totals	638	37.66%	971	57.32%	85	5.02%	1,694

COMMISSIONERS TOWN OF WEAVERVILLE

Precinct	Warren Alcorn		Walter L. Currie		Robert (Fish) English		Darryl Hansome		Doug Jackson		(Continued..)
58.1	0		0		0		0		0		
59.1	23		43		3		7		6		
67.1	141		506		39		74		331		
71.1	0		1		1		0		2		
ABSENTEE	0		0		0		0		0		
CURBSIDE	0		0		0		0		0		
PROVISIONAL	0		0		0		0		0		
TRANSFER	0		0		0		0		0		
Totals	164	7.85%	550	26.32%	43	2.06%	81	3.88%	339	16.22%	

Election Date: 11/06/2007 **11/06/2007 MUNICIPAL GENERAL**

COMMISSIONERS TOWN OF WEAVERVILLE (Continued)

Precinct	Mel Kelley		Gene Knoefel		Marcy D. Nisbeth		Bryan E. (Cleve) Rice		Totals
58.1	0		0		0		0		0
59.1	20		55		6		7		170
67.1	206		352		136		126		1,911
71.1	0		1		2		2		9
ABSENTEE	0		0		0		0		0
CURBSIDE	0		0		0		0		0
PROVISIONAL	0		0		0		0		0
TRANSFER	0		0		0		0		0
Totals	226	10.81%	408	19.52%	144	6.89%	135	6.46%	2,090

MUNICIPAL ELECTION

November 6, 2007

ABSTRACT OF VOTES
FOR
FEDERAL, STATE AND COUNTY OFFICERS
FOR
BUNCOMBE COUNTY, NC

INSTRUCTIONS

THREE COPIES are to be made. One copy is to be signed by the County Board of Elections and delivered by them, when the canvass is concluded, to the City Clerk. One copy is to be retained by the County Board of Elections. One copy is to be mailed on canvass day to the Chairman of the State Board of Elections, Raleigh, North Carolina.

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

The County Board of Elections for said county, having opened, canvassed, and judicially determined the original returns of the election in the precincts in this county, held as above stated, do hereby certify that the above is a true abstract thereof, and contains the number of legal ballots cast in each precinct for each office named, the name of each person voted for, their party affiliation, and the number of votes cast for each person for the office named.

This the 13th day of November, 2007

Lucy L. Smith

This day personally appeared before me, Lucy Smith as Secretary
Chairman of the BUNCOMBE County Board of Elections, who,
being duly sworn, says the abstract of votes herein contained is true and
correct, according to the returns made to said Board.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed
my notarial seal, this the 13th day of November 2007

Ulma D. Lee

(Seal)

My Commission (if any) Expires: 8/21/2010

381

	Alderman Town of Woodfin Kasha Baxter	Asheville City Council Matt Mattan
1.1		
2.1		
3.1		
4.1		
5.1		
6.1		
7.1		
8.1		2
9.1		2
10.1		
12.1		
13.1		
14.2		
16.1		
17.1		
18.1		
20.1		
21.1		
22.1		
24.1		1
25.1		
29.1		
31.1		
33.2		
33 3		
34.1		
35.1		
36.1		
57.1		1
67.1		
68.1		
69.1		
70.1	7	
71.1		
Total	7	6

8/21/2020
Nora D. Baker
PRF

Lucy M. Smith,
Secretary
Robert H. Lee

BUNCOMBE COUNTY, NORTH CAROLINA

Certificate Of Referendum Results

For the City of Asheville

This Is To Certify That the Question posed before the Voters of Asheville amending the Asheville City Charter and changing the manner of election of the mayor and city council from non-partisan to partisan has been rejected.

At the General Election held on the 6th day of November, 2007.

Chairperson, Buncombe County Board of Elections

MUNICIPAL ELECTION

November 6, 2007

ABSTRACT OF VOTES
FOR
FEDERAL, STATE AND COUNTY OFFICERS
FOR
BUNCOMBE COUNTY, NC

INSTRUCTIONS

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STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

The County Board of Elections for said county, having opened, canvassed, and judicially determined the original returns of the election in the precincts in this county, held as above stated, do hereby certify that the above is a true abstract thereof, and contains the number of legal ballots cast in each precinct for each office named, the name of each person voted for, their party affiliation, and the number of votes cast for each person for the office named.

This the 16th day of November, 2007

RECOUNT

Exhibit "D"

This day personally appeared before me, [illegible],
Chairman of the BUNCOMBE County Board of Elections, who,
being duly sworn, says the abstract of votes herein contained is true and
correct, according to the returns made to said Board.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed
my notarial seal, this the 14th day of November, 2007

Nora D. Pate
(Seal)

My Commission (if any) Expires: 8/21/10

385

ASHEVILLE CITY COUNCIL

Precinct	Dwight Butner	Jan Davis	Bryan Freeborn	Elaine Lite	Brownie Newman	(Continued..)
01.1	82	181	147	128	174	
02.1	136	294	460	409	530	
03.1	126	243	314	293	355	
04.1	174	327	216	179	284	
05.1	520	658	267	264	380	
06.1	201	224	136	153	200	
07.1	127	228	278	280	311	
08.1	206	250	241	148	248	
09.1	172	227	167	146	219	
10.1	52	117	103	81	117	
11.1	35	89	104	89	124	
12.1	122	167	219	201	241	
13.1	113	189	219	194	235	
14.2	94	171	163	135	177	
14.3	54	74	41	32	45	
15.1	200	310	305	238	316	
16.1	206	270	260	229	277	
17.1	208	307	184	196	232	
18.1	383	468	141	159	225	
19.1	102	111	26	20	27	
20.1	67	89	88	98	105	
21.1	300	366	245	179	266	
22.1	212	294	133	162	184	
23.1	177	207	71	73	121	
24.1	186	222	85	76	100	
25.1	223	271	149	110	182	
26.1	117	169	103	88	100	
27.1	189	271	160	182	206	
28.1	159	243	227	217	282	
29.1	249	374	159	148	222	
43.1	7	11	2	5	6	
44.1	8	12	4	5	5	
45.1	3	6	3	3	4	
54.1	40	53	16	19	20	
55.1	6	5	2	4	2	
56.1	34	53	15	22	28	
57.1	3	4	5	3	2	
60.3	23	31	14	23	22	

Election Date: 11/06/2007 11/06/2007 MUNICIPAL GENERAL

ASHEVILLE CITY COUNCIL

Precinct	Dwight Butner		Jan Davis		Bryan Freeborn		Elaine Lite		Brownie Newman		(Continued..)
62.1	16		21		10		9		15		
71.1	21		23		9		8		12		
ABSENTEE	0		0		2		0		0		
CURBSIDE	0		0		0		0		0		
PROVISIONAL	0		0		0		0		0		
TRANSFER	8		11		17		15		19		
Totals	5,361	15.00%	7,641	21.38%	5,510	15.42%	5,023	14.06%	6,620	18.53%	

ASHEVILLE CITY COUNCIL (Continued)

Precinct	Bill Russell	Totals
01.1	91	803
02.1	115	1,944
03.1	120	1,451
04.1	202	1,382
05.1	518	2,607
06.1	173	1,087
07.1	114	1,338
08.1	189	1,282
09.1	197	1,128
10.1	58	528
11.1	37	478
12.1	101	1,051
13.1	120	1,070
14.2	112	852
14.3	62	308
15.1	204	1,573
16.1	203	1,445
17.1	217	1,344
18.1	463	1,839
19.1	116	402
20.1	58	505
21.1	292	1,648
22.1	228	1,213
23.1	173	822
24.1	208	877
25.1	230	1,165
26.1	121	698
27.1	186	1,194
28.1	146	1,274
29.1	334	1,486
43.1	7	38
44.1	10	44
45.1	5	24
54.1	51	199
55.1	7	26
56.1	42	194
57.1	5	22
60.3	23	136

W80

ASHEVILLE CITY COUNCIL (Continued)

Precinct	Bill Russell		Totals
62.1	16		87
71.1	20		93
ABSENTEE	0		2
CURBSIDE	0		0
PROVISIONAL	0		0
TRANSFER	4		74
Totals	5,578	15.61%	35,733

	Precinct 8		Precinct 16	
	Freeborn	Russell	Freeborn	Russell
Precinct Count	223	173	245	192
Mail-in Absentee	1	3	2	2
Early Voting	17	13	11	8
Provisional	0	0	0	1
Transfer (not counted today/separate precinct)				
TOTAL	241	189	258	203

SAMPLE RECOUNT OF NOVEMBER 26, 2007

Jones Byrd, Chairman

Bob Van Wagner

Lucy Smith

This day personally appeared before me, Jones P. Byrd, Chairman of the Buncombe County Board of Elections, who, being duly sworn, says the abstract of votes herein contained is true and correct, according to the returns made to said Board.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal, this the 26th day of November, 2007

My Commission Expires: 9-16-09

Tuesday - December 11, 2007 – 5:00 p.m.

ORGANIZATIONAL SESSION:

Mayor Terry M. Bellamy welcomed everyone to the organizational session.

The Marine Corp JROTC led City Council in the Pledge of Allegiance.

Mayor Bellamy then introduced the Reverend Heidi Campbell-Robinson from Abernethy United Methodist Church who gave the invocation.

The Honorable Gary S. Cash, Chief Judge of the Buncombe County District Court, administered the Oath of Office to the following, who after sworn, thanked family and friends for their support:

Council Member Jan B. Davis
Council Member Brownie W. Newman
Council Member William A. Russell Jr.

RESOLUTION NO. 07-212 - RESOLUTION OF APPRECIATION FOR BRYAN E. FREEBORN

Mayor Bellamy read the resolution.

Resolution No. 05-212 was adopted by acclamation.

Mayor Bellamy thanked Mr. Freeborn for his service to Asheville and presented him with the resolution, a plaque, his name plate and a City pen.

RESOLUTION BOOK NO. 31 - PAGE 27

RECOGNITION OF VICE-MAYOR HOLLY JONES

Mayor Bellamy read the recognition, expressing her and the Asheville City Council's gratitude to Councilwoman Jones for her service as Vice-Mayor to the citizens of the City of Asheville.

Mayor Bellamy presented Councilwoman Jones with the recognition and a gift of pottery.

ELECTION OF VICE-MAYOR

Councilman Newman nominated Councilman Davis as Vice-Mayor of the City of Asheville. Councilwoman Cape seconded the nomination.

After hearing no more nominations, Mayor Bellamy closed the floor for nominations.

Mayor Bellamy called for a vote, resulting in Councilman Davis being appointed as Vice-Mayor unanimously.

Vice-Mayor Davis said that he was honored to be Vice-Mayor, and one of his goals will be to make it easy for citizens to apply to the City's various boards and commissions. He stressed that City Council does listen to those voices and they can make a difference.

COMMENTS FROM MAYOR

Mayor Bellamy said that City Council is committed to working on the issues that are important to our community, including gang prevention and intervention, as well as the various other crimes and illegal activities; infrastructure and things of that nature that really impact our community; and building relationships with other entities in Asheville and Buncombe County. She invited the community to two community goal setting meetings on January 29, 2008, and February 5, 2008. That is City Council's opportunity to hear from the public before they go into their goal setting retreat on February 15-16, 2008. She said that this Council will be working on the citizens' behalf and they will hit the ground running with their first meeting in January - which will be January 8, 2008.

ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 5:30 p.m. and invited the public to attend a small reception honoring the new Council members.

Tuesha Lyles
CITY CLERK

Terry M Bellamy
MAYOR

Tuesday – January 8, 2008 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; Councilman William A. Russell Jr.; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Keisha Lipe

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

The Reverend Robert Blackburn from Central United Methodist Church gave the invocation.

I. PROCLAMATIONS:

II. CONSENT AGENDA:

At the request of Councilman Mumpower, Consent Agenda Items "C", "G" and "H" were removed from the Consent Agenda for individual votes.

At the request of Mayor Bellamy, Consent Agenda Item "B" was removed from the Consent Agenda for an individual vote.

A. APPROVAL OF THE MINUTES OF THE FORMAL MEETINGS HELD ON NOVEMBER 20, 2007; NOVEMBER 27, 2007; AND THE ORGANIZATIONAL MEETING HELD ON DECEMBER 11, 2007

B. RESOLUTION AUTHORIZING THE MAYOR TO CONVEY AIR SPACE ADJACENT TO 150 COXE AVENUE TO ZONA LOFTS, LLC, FOR THE PURPOSE OF ERECTING A PERMANENT BUILDING OR STRUCTURE

This item was removed from the Consent Agenda for an individual vote.

C. BUDGET AMENDMENT FOR THE ANNUAL ALLOCATION FROM THE STATE OF NORTH CAROLINA DEPT. OF ENVIRONMENT AND NATURAL RESOURCES FOR THE WNC NATURE CENTER

This item was removed from the Consent Agenda for an individual vote.

D. RESOLUTION NO. 08-02 - RESOLUTION AMENDING THE CONSOLIDATED ACTION PLAN FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM FOR AN INCREASE TO ON TRACK FINANCIAL EDUCATION & COUNSELING

Summary: The consideration of a resolution to amend the Consolidated Action Plan for the Community Development Block Grant (CDBG) Program for a $3,500 increase to On Track Financial Education & Counseling.

Consumer Credit Counseling Services of WNC d/b/a On Track Financial Education & Counseling (On Track) has requested an increase in its CDBG grant in order to help cover the cost of its Volunteer Income Tax Assistance (VITA) program in 2008.

In 2007, On Track used a $50,000 grant from the U.S. Dept. of Health and Human Services to expand local VITA efforts by 87%, helping 2,140 low-income taxpayers to complete returns and bringing in $1,600,000 in tax refunds, including over $585,000 in Earned Income and Child Tax Credits. The agency's application to DHHS for 2008 funding was not successful; only 10 DHHS grants were awarded nationwide. On Track is now seeking funds from other sources to maintain its VITA program and has requested additional CDBG funds. Its current $30,000 CDBG grant is being used for its financial counseling and homebuyer education programs.

CDBG funding for public service programs such as On Track's is capped, by statute, at 15% of the sum of this year's CDBG entitlement grant plus last year's program income. The Housing and Community Development Committee has recommended adding $3,500, the maximum still available under the cap, to On Track's CDBG grant for 2007-08, bringing the total to $33,500.

The change is not considered "substantial" and no public hearing is required.

Sufficient CDBG funds are available in contingency

Pros:

- Supports a successful program that enables low-income working families to access tax refunds to which they are entitled.
- Helps families avoid both the cost of professional tax preparation and expensive "refund anticipation loans", which are heavily promoted by tax-preparers.
- Brings additional federal funds into the local economy.

Con:

- Completely exhausts the City's capacity to assist any more public services with CDBG funds in FY2007-08.

Staff recommends City Council approve a resolution to amend the Consolidated Action Plan for the Community Development Block Grant Program for a $3,500 increase to On Track Financial Education & Counseling.

Councilwoman Jones said that when the public receives their W-2 forms, they should contact On Track Financial Education & Counseling instead of some quick loan companies because On Track is a good program that can help without the high costs associated with other loan programs.

Note: In that there was an error in not removing this item from the Consent Agenda for an individual vote, Councilman Mumpower felt that the way the current tax structure is set up, he would not have been supportive of this action.

RESOLUTION BOOK NO. 31 - PAGE 42

E. RESOLUTION NO. 08-03- RESOLUTION AUTHORIZING OAKCREST PLACE IN THE DEAVERVIEW ROAD/BEAR CREEK ROAD AREA OF WEST ASHEVILLE TO BECOME A PUBLICLY-MAINTAINED STREET

Summary: The consideration of a resolution authorizing Oakcrest Place in the Deaverview Road/Bear Creek Road area of West Asheville to become a publicly-maintained street.

Section 7-15-1(e)(4) a requires that streets dedicated for public use by accepted by resolution of the City Council. The developer submitted a written request via e-mail on September 25, 2007, asking the City to accept Oakcrest Place as a publicly-maintained street.

Oakcrest Place is a developer-constructed street that has an average width of 20 feet and a length of 0.24 mile. Transportation and Engineering Department staff and Public Works Department staff inspected this street and determined that it was constructed according to current standards as indicated in the City of Asheville's Standard Specifications and Details Manual.

Following City Council's approval of this resolution, Oakcrest Place will be added to the official Powell Bill List.

Pros:

- The City of Asheville will receive Powell Bill Funds from the N.C. Dept. of Transportation to maintain the street.
- The street provides connectivity in a residential community.
- The City of Asheville will be able to provide services to the citizens that live along the subject street.

Con:

- Powell Bill Funds will probably not cover 100% of the total cost to maintain the street.

Staff recommends that City Council approve a resolution authorizing Oakcrest Place in the Deaverview Road/Bear Creek Road Area of West Asheville to become a publicly-maintained street.

RESOLUTION BOOK NO. 31 - PAGE 43

F. RESOLUTION NO. 08-04 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR A GRANT FROM THE PRE-DISASTER MITIGATION GRANT PROGRAM FOR PROCUREMENT AND INSTALLATION OF TWO TELECOMMUNICATION MICROWAVE LINKS FOR THE CITY OF ASHEVILLE 800 MHZ RADIO SYSTEM

Summary: The consideration of a resolution authorizing the City Manager to apply for a grant in the amount of $484,000 from the Pre-Disaster Mitigation (PDM) grant program administered by the Federal Emergency Management Agency for procurement and installation of two telecommunications microwave links for the City of Asheville (COA) 800 MHz radio system.

The City of Asheville Fire and Rescue Department has identified potential grant funding through FEMA for the procurement and installation of two telecommunications microwave links. These links would establish redundant connectivity for two of the three radio communications towers utilized by the COA. This redundancy would enable the continued use of the COA 800 MHz radio system in the event that existing connectivity was severed.

Pros:

- Grant would provide for an infrastructure upgrade to the COA Communications System providing redundant connectivity with the system prime site.
- Grant would supplement a large portion of a future Capital Improvement Plan line item.
- At the present time, redundant connectivity exists at only one of three sites.
- The redundant infrastructure will provide an additional margin of safety during emergency operations ensuring continued and reliable communications.
- Grant would benefit all COA departments using the COA 800 MHz radio system.

Cons:

- The City's matching funds are 25% ($121,000) of the total grant.
- We will incur full maintenance costs of the equipment which is estimated to be from 10-20% of the initial capital expenditure.

City staff recommends City Council approve a resolution authorizing the City Manager to apply for a grant in the amount of $484,000 from PDM grant program administered by the Federal Emergency Management Agency for procurement and installation of two telecommunications microwave links for the COA 800 MHz radio system.

RESOLUTION BOOK NO. 31 - PAGE 45

G. RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT GRANT FUNDS UNDER THE N.C. GOVERNOR'S HIGHWAY SAFETY PROGRAM TO ASSIST THE ASHEVILLE POLICE DEPARTMENT WITH THE PURCHASE OF TRAFFIC ENFORCEMENT AND INVESTIGATIVE EQUIPMENT

This item was removed from the Consent Agenda for an individual vote.

H. BUDGET AMENDMENT FOR THE N.C. GOVERNOR'S HIGHWAY SAFETY PROGRAM FOR THE ASHEVILLE POLICE DEPARTMENT

This item was removed from the Consent Agenda for an individual vote.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilwoman Cape moved for the adoption of the Consent Agenda. This motion was seconded by Vice-Mayor Davis and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

B. RESOLUTION NO. 08-01 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY AIR SPACE ADJACENT TO 150 COXE AVENUE TO ZONA LOFTS, LLC, FOR THE PURPOSE OF ERECTING A PERMANENT BUILDING OR STRUCTURE

Summary: The consideration of a resolution authorizing the Mayor to convey air space adjacent to 150 Coxe Avenue to Zona Lofts, LLC for the purpose of erecting a permanent building or structure.

On October 25, 2007, a qualifying bid was received from Zona Lofts LLC in the amount of $1,872.36 for the purchase of 398 square feet of air space for the purpose of constructing permanent architectural features to a proposed building at 150 Coxe Avenue. Pursuant to N. C. General Statute sec. 160-269, the City Council of the City of Asheville adopted Resolution No. 07-212 directing the City Clerk to advertise for upset bids in regard to airspace at 150 Coxe Avenue. The notice ran in the Asheville Citizen Times on December 14, 2007. No qualifying upset bids were received in response to said advertisement.

Based on previous Council direction in regard to the sale of air rights, a fee structure has been created by staff to reflect real property transactions such as these. This fee structure will be reviewed by the Revenue and Finance Committee and upon approval, will proceed to implementation for future projects during the next budget cycle beginning July 1, 2008.

Approval of the resolution will authorize the sale of the property to Zona Lofts, LLC for the amount of $1,872.36.

Pros:

1. The sale will be at fair market value.
2. The architectural details will provide a more visually interesting façade on the building.
3. The rounded overhangs serve as a green feature to provide sun shade to reduce cooling needs.

Con: There is no negative impact.

Economic Development staff recommends City Council approve a resolution authorizing the Mayor to convey air space adjacent to 150 Coxe Avenue to Zona Lofts, LLC for the purpose of erecting a permanent building or structure.

Mayor Bellamy was not supportive of selling air space over sidewalks.

Councilman Newman moved for the adoption of Resolution No. 08-01. This motion was seconded by Councilman Mumpower and carried on a 6-1 vote, with Mayor Bellamy voting "no."

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C. ORDINANCE NO. 3566 - BUDGET AMENDMENT FOR THE ANNUAL ALLOCATION FROM THE STATE OF NORTH CAROLINA DEPT. OF ENVIRONMENT AND NATURAL RESOURCES FOR THE WNC NATURE CENTER

Summary: The consideration of a budget amendment, in the amount of $112,879, for the annual allocation from the State of North Carolina Department of Environment and Natural Resources through the Grassroots Science Museums Collaborative.

Each year the State of North Carolina allocates and distributes funds to the 25 to 30 member museums, science centers and nature centers in North Carolina for the Grassroots Science Program as supported by North Carolina Senate Bill 1741. The total state funds available in Fiscal Year 2007-08 are $3,481,340. The Nature Center allocation for the same period is $112,879.

Funds will be used to enhance the efforts of the Nature Center to improve exhibits, educational programs and collection, special events, staff development and collection to better accomplish the Nature Center's mission to improve public understanding and appreciation of the region's natural history.

The Nature Center transferred to the City of Asheville in 2005. Since then the Nature Center has administered these funds via the Friends of the Nature Center. Earlier this year, the City of Asheville directed the Nature Center that beginning with the Fiscal Year 2007-08 contract period, the allocation would be administered by the City of Asheville.

Pros:

- Provide additional operating funds to support the overall operating cost of the Nature Center.
- Provide funds to enhance special projects and services to Nature Center visitors
- Provide funds to assist in fulfilling standards and maintaining Nature Center accreditation with the Association of Zoos and Aquariums

Cons:

- None

The Parks and Recreation Department recommends City Council approve a budget amendment, in the amount of $112,879, for the annual allocation from the State of North Carolina

Department of Environment and Natural Resources through the Grassroots Science Museums Collaborative.

Councilman Mumpower felt that the way the current tax structure is set up, he would not be supportive of this action.

Councilwoman Cape moved for the adoption of Ordinance No. 3566. This motion was seconded by Councilwoman Jones and carried on a 6-1 vote, with Councilman Mumpower voting "no."

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G. RESOLUTION NO. 08-05 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT GRANT FUNDS UNDER THE N.C. GOVERNOR'S HIGHWAY SAFETY PROGRAM TO ASSIST THE ASHEVILLE POLICE DEPARTMENT WITH THE PURCHASE OF TRAFFIC ENFORCEMENT AND INVESTIGATIVE EQUIPMENT

Summary: The consideration of a resolution authorizing the City Manager to accept grant funds under the North Carolina Governor's Highway Safety Program to assist the Asheville Police Department with the purchase of traffic enforcement and investigation equipment; and the associated budget amendment in the amount of $10,000.00.

The Asheville Police Department currently participates in the North Carolina Governor's Highway Safety Program Highway Safety campaigns. In order to facilitate better participation and efficiency of highway safety initiatives, a regional law enforcement network was created to enhance communication and effectiveness. The Asheville Police Department promotes highway safety statewide by designating a member of the department to serve as the regional liaison for GHSP Region 8 (Western North Carolina).

This action conforms to the City Council's Strategic Operating Plan under Partnerships to Improve Critical Services and Infrastructure. Goal 2, Objective A: Research and develop strategies for securing significant new recurring revenue sources.

Pros:

- Reimbursement revenue to cover the cost of obtaining the needed in-car camera system, the digital camera, and to cover the travel expenses incurred as a result of the liaison position.
- No local match of funds required.

Cons:

- Dedicate the man-hours for the officer charged with the liaison duties to accomplish the goals stated in the grant contract.
- The city will have to bear the cost of maintaining the equipment.

City staff recommends City Council approve a resolution authorizing the City Manager to accept grant funds under the North Carolina Governor's Highway Safety Program to assist the Asheville Police Department with the purchase of traffic enforcement and investigation equipment; and the associated budget amendment in the amount of $10,000.00.

Councilman Mumpower spoke against this matter in that there is little or no opportunity for timely accountable justice, and would speak against the issue due to a procedural and fairness concerns.

Vice-Mayor Davis moved for the adoption of Resolution No. 08-05. This motion was seconded by Councilman Newman and carried on a 6-1 vote, with Councilman Mumpower voting "no."

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H. ORDINANCE NO. 3567 - BUDGET AMENDMENT FOR THE N.C. GOVERNOR'S HIGHWAY SAFETY PROGRAM FOR THE ASHEVILLE POLICE DEPARTMENT

Summary: See Consent Agenda "G" above.

Councilwoman Cape moved for the adoption of Ordinance No. 3567. This motion was seconded by Councilwoman Jones and carried on a 6-1 vote, with Councilman Mumpower voting "no."

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III. PRESENTATIONS & REPORTS:

A. PRESENTATION OF THE FISCAL YEAR 2007 COMPREHENSIVE ANNUAL FINANCIAL REPORT

Chief Financial Officer Ben Durant said that at the conclusion of each fiscal year, an annual audit of the city's financial statements is conducted. The purpose of the audit is to obtain reasonable assurance that basic financial statements are free of material misstatement; to examine evidence supporting the amounts and disclosures in the financial statements; and to assess accounting principles used and the overall presentation of the financial statement.

Mr. Brian Broom, Director of Dixon Hughes, PLLC, summarily reviewed with Council the annual audit. He said that the following is the audit and financial statement summary: "Our report for the 2007 audit expresses an unqualified opinion on the fair presentation of the basic financial statements in all material respects, in conformity with accounting principles generally accepted in the United States of America. Our report can be found on Page 1 of the Comprehensive Annual Financial Report (CAFR). Our reports on compliance and internal control, in accordance with Government Auditing Standards, OMB Circular A-133, and the State Single Audit Implementation Act, disclosed one material weakness in internal controls over financial reporting and one instance of non-compliance in the administration of federal awards programs. Our compliance reports and a summary of the results can be found on Pages 128-140 of the CAFR. Also, we noted some areas for improvement in the City's accounting function that we have communicated to management in a separate letter dated October 31, 2007." He pointed out to Council two material weaknesses as follows: (1) "erroneous reconciling items on four different versions of the bank reconciliation for the main operating account that later led to the discovery of a duplicate entry recorded to cash in the amount of $947,042." The effect was that the cash in the Mass Transit Fund was overstated by $947,042. The cause was improper supervision and review of staff by manager with direct over-sight responsibility. Their recommendation is that the City review its bank reconciliation procedures and make necessary changes to ensure cash balances are properly reconciled each month; and (2) "as noted in the Consolidated Annual Performance and Evaluation Report, 14 projects were listed as being subject to inspection. Of these 14 projects, only 2 met the monitoring requirements specified above." The effect was that the HOME projects could be out of compliance. The cause was recent staff turnover has left the City without sufficient resources to stay current on its inspections. Their recommendation was that the City devote sufficient resources to comply with HOME standards.

Throughout discussion, Mr. Broom responded to various questions/comments from Council, some being, but are not limited to: assurance that the Water Fund is reviewed thoroughly from an accountability stand-point; available Fund Balance and if that percentage is adequate; clarification on the two material weaknesses; what does an "unqualified" opinion mean;

is a 99.4% tax collection ratio in Asheville good; are new accounting standards in place because of the Enron issue; and Council getting accountability not only from the annual audit but reviews throughout the year during the quarterly financial reports.

In response to Councilman Newman about the two material weaknesses noted, Mr. Broom felt confident that after discussions with City staff, they seriously considered the comments and implemented changes. A Corrective Action Plan is in place and they are in the process of implementing change. Whether the changes are fully implemented by the end of the Fiscal Year he couldn't say, but at least the controls will be in place.

Finance Director Ben Durant explained that in his opinion the transit weakness was basically a bookkeeping error, which was corrected. There were some employee performance issues that caused that to happen and those have been dealt with. We have also reorganized the Accounting Division into two areas so that we can have a very intense focus on each of those functions.

In response to Mayor Bellamy, City Manager Jackson said that the new procedures will apply to both weaknesses.

Mayor Bellamy asked that as part of the next quarterly report that Council receive an update on how the new procedures are going in both departments regarding the two audit findings. She also requested additional information on the breakdown of fiscal year revenue - basically what the carry-over was from Fiscal Year 2005-06 vs. Fiscal Year 2006-07. She also felt it would also be good to highlight the increase in the other revenues so Council can specifically see where we have grown in all our areas vs. what we had anticipated.

B. BELE CHERE REPORT

Mr. Byron Greiner, Bele Chere Board Chair, reviewed with Council the 2007 Bele Chere Annual Report. This community based celebration consists of 52 downtown merchants, 13 local restaurants, 36 local sponsors, 23 visual artists, 7 local breweries and poster artist John Dietz.

Nearly 300,000 people attended the festival in 2007 resulting in increased community pride, high visibility for the region, and an estimated $12 million economic impact for Western North Carolina.

The festival reported a profit of $62,166 on direct expenditures versus revenues; however the festival reported a loss of $57,834 when including the indirect costs of city staff time for advance festival planning and for work during the festival itself.

Approximately 75 citizens participated in the Bele Chere Community Forum on January 30, 2007, to develop a consensus on two key questions related to the festival. In addition, more than 100 citizens provided their input in writing.

The Bele Chere Board of Directors was charged with reviewing the feedback and making recommendations to City Council for modifying the festival to ensure it represents what citizens want in a community festival. Based on citizen input, the Board developed recommendations related to three key community goals. With City Council's input on policy decisions, the Bele Chere Board of Directors implemented some of the community's suggestions at the 2007 festival.

For 2007 implementation, the community goal to make the festival more local resulted in (1) 36 local entertainers, 50% of total band composition in 2007; (2) 23 local artists, 20% increase over 2006; (3) 6 local breweries participated; and (4) moved stage to N. Lexington and

Hiawassee. The community goal to explore funding models to reduce financial burden resulted in expenditures reduced from 2006 to 2007 by $125,552.

For the 2008 implementation, the community goal to make the festival more local will include (1) local entertainment to be held at 35% of total band composition; (2) expand microbrewery program, and (3) negotiate new talent buyer contract. The community goal to explore funding models to reduce financial burden will be addressed as the Bele Chere Board and City staff are researching options for contracting with an outside sponsorship agency to attract new partners.

Below is a summary of the Bele Chere Board of Director's recommendations as an outcome of the Bele Chere Community Forum.

1. Food & Beverage Fee Reduction for Western North Carolina Restaurants

A reduced fee of $500 is already offered for restaurants located in the Asheville city limits that participate in the Taste of Asheville food court. Staff and board members have had difficulty reaching full capacity in this food court. Reduction in food and beverage fees to Western North Carolina restaurants and food vendors represent a potential revenue loss of $1,300 per booth for a total of $80,000 if all available booth spaces are sold. Due to low demand from local restaurants, the Bele Chere Board recommends maintaining the current fee structure.

Pros:
- Enhanced opportunity for greater participation
- Promote community goodwill

Cons:
- Potential revenue loss of $80,000
- Adequate participation may be an unrealistic goal

2. Arts & Crafts Fee Reduction for West North Carolina Artists

Reduction in fees by $50 for Western North Carolina artists could result in $8,000 in lost festival revenue. The fee reduction has the potential to attract art organizations that may not otherwise apply due to financial considerations. In an effort to increase participation to more than the 23 local artists that participated in 2007, the Bele Chere Board recommends offering a $50 reduction in fees for Western North Carolina artists. The revenue loss could be realized in other existing budget line items such increased vendor revenue from Downtown Merchant fee increase as listed below in recommendation #3.

Pros:
- Enhanced opportunity for greater participation
- Promote community goodwill

Con:
- Potential revenue loss of $8,000

3. Downtown Merchants Fee Increase

After researching other festival's fee structures, the Bele Chere Board recommends raising the single booth fee of $50 for downtown merchants to $100, if that booth space is located in front of the merchant's store. Additional booth fees for a second space or a space in another area of the festival would be at the local booth rate of $250.

Pros:

- Potential revenue increase ranging from $2,600 - $10,400
- Enhanced focus on handmade arts and crafts
- Encourages merchants to showcase permanent storefronts

Cons:
- Negative reaction from downtown merchant community
- Potential reduction in participation

4. Date of Festival

A 2007 festival survey indicated 75.8% of festival-goers preferred the date to remain the last weekend in July. Survey information compiled from festival vendors and sponsors indicated 73% prefer the date to remain the last weekend in July. Reasons indicated for not attending another time of the year include 1) school scheduling conflicts, 2) traditional family vacation destination, and 3) vendor and mobile marketing tour routing conflicts. Additional festival research indicates well-established festivals with a built in audience base are not successful in migrating their audience, therefore resulting in loss of revenue and ultimately the identity of the festival. The Bele Chere Board recommends keeping the last, full weekend in July as the permanent festival dates.

Pro:
- Potential increase in tourism during shoulder season

Cons:
- Significant loss of attendees, sponsors and vendors
- Significant loss of revenue
- Significant loss of festival identity
- Potential decline and loss of festival

5. Greening of the Festival

At the March 2007 City Council meeting, discussions ensued about creating a more environmentally friendly festival. Preliminary information from Seven Star, Inc. indicates a financial commitment of $15,000-$20,000 to begin a successful greening program. Staff and the Bele Chere Board recommend proceeding with a Request for Proposals (RFP) to obtain additional greening proposals from other organizations. The funding for an adequate greening program would need to be considered for the Fiscal Year 2008-09 budget proposal. Staff and board still need to consider if the festival can generate $20,000 in additional revenue to offset the cost of greening the festival.

Pro:
- Festival becomes more environmentally friendly

Con:
- Significant cost associated with an adequate program

The Bele Chere 2007 Annual Report is for City Council's review and information. The Bele Chere Board of Directors recommends City Council approve the recommendations in the Bele Chere Community Forum Report. The Bele Chere Board structure is for City Council's information.

As Councilman Mumpower felt the Bele Chere Board has done their best to make Bele Chere work, he moved to approve all five recommendations made by the Bele Chere Board. This motion was seconded by Councilman Russell.

Councilwoman Jones felt that even though the Bele Chere Board has brought to Council their expertise and their recommendations for the festival, as an elected official, Council's role is to discuss the specifics and talk about what is best for the City. She then moved to vote on each of the five recommendations separately. This motion was seconded by Councilwoman Cape and carried on a 5-2 vote, with Councilman Mumpower and Councilman Russell voting "no."

Throughout discussion, Mr. Greiner responded to various questions/comments from Council regarding different policy considerations, some being, but are not limited to: was there discussion of reducing the food and beverage fee to only Asheville restaurants or was the discussion solely around restaurants in Western North Carolina; what are the individual financial impacts of each of the five recommendations; request to work with the Sustainable Energy & Environment Committee on greening the festival; how much money is allocated for Bele Chere in terms of staff time and how much staff time is allocated for the other festivals the city co-sponsors; is it clear what Western North Carolina means in terms of fees; request to articulate on the Bele Chere website what the counties are in Western North Carolina which are applicable to the fees;

At the request of Mayor Bellamy, Parks & Recreation Director Roderick Simmons said staff will provide Council with a report on exactly what it is costing the City on each festival we co-sponsor.

When Councilwoman Cape asked if the Western North Carolina region coincided with the AdvantageWest region, Mayor Bellamy thought the Advantage West region was a little larger. Councilwoman Cape suggested and Mayor Bellamy agreed for staff to contact Community Foundation and Handmade in America to work with them in advertising outreach.

Policy Consideration No. 1 for a food & beverage fee reduction for Western North Carolina restaurants was discussed. Councilman Mumpower then moved to concur with the Board recommendation of maintaining the current fee structure. This motion was seconded by Councilman Russell and carried unanimously.

Policy Consideration No. 2 for an arts and craft fee reduction for Western North Carolina artists was discussed. Councilman Mumpower then moved to concur with the Board recommendation of a $50.00 reduction in fees for Western North Carolina artists. This motion was seconded by Councilman Russell and carried unanimously.

Policy Consideration No. 3 for a downtown merchants fee increase was discussed. Councilman Newman then moved to not concur with the Board recommendation to increase single booth fees by $50.00. This motion was seconded by Councilwoman Jones and carried unanimously.

Policy Consideration No. 4 for a change in the date of the festival was discussed. Councilwoman Cape then moved to concur with the Board recommendation to continue the festival on the last, full weekend in July as the permanent festival dates. This motion was seconded by Councilman Mumpower.

Councilman Newman felt that changing the date of the festival is economic in nature. Since Asheville's tourism is going full blast at the end of July he wondered if we might have something close to the Bele Chere economic number that weekend if the Festival were moved to another date. He wondered if polling the sponsors and festival goers (that the Festival current works for) gives an accurate account. Ms. Melissa Porter, Festival Director, responded by saying that in 2005 the City contracted with Western Carolina University to provide the survey.

Mayor Bellamy strongly supported not changing the date of the festival because to change it would be a costly experiment on the back of Asheville taxpayers. If the Tourism

Development Authority and/or the Restaurant Association wants to pay for the costs associated with that experiment, then okay.

Councilwoman Cape moved to amend her motion to continue the festival on the last, full weekend in July as the festival dates (deleting the word permanent to leave the door open for future conversation). Councilman Mumpower accepted the amendment. This amended motion carried unanimously.

Policy Consideration No. 5 for greening the festival was discussed. Councilman Mumpower then moved to concur with the Board recommendation tc proceed with a RFP to obtain greening proposals. This motion was seconded by Councilman Newman and carried unanimously.

Councilwoman Cape said that there are many things we can do internally to green the festival, i.e., require vendors to supply their own recycling; describe the kind of materials their containers are made out of; use of biodegradable plates, cups and utensils, etc. We could raise the standards with the requirements for participation.

Vice-Mayor Davis appreciated the hard work of the Board and staff on the festival and hoped they continue soliciting public input. He suggested another community forum be held in two years.

Councilwoman Jones noted that staff does a good job in cleaning up after the festival, but wondered if we could use that opportunity to do a more thorough cleaning to keep Asheville clean.

Councilwoman Jones and Councilwoman Cape hoped the Board would work to make local entertainers 40-50% of the total band composition. The festival is a great engine for local musicians to be seen by that many people. After Mr. Greiner explained that booking musicians for Bele Chere is a balancing act in that the Board doesn't want to impede other venues in the City from selling tickets to their events during that weekend. Mayor Bellamy suggested the Board do some market research in the local music scene venues in and around Asheville to make sure there is coordination in our efforts.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF PROPERTY LOCATED AT CHARLOTTE STREET AND CELIA STREET FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT AND RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT TO NEIGHBORHOOD BUSINESS DISTRICT/CONDITIONAL ZONING FOR THE USE AS THE PRESERVATION SOCIETY'S OFFICE; AND A REQUEST FOR MODIFICATIONS WITH RESPECT TO SIDEWALKS, LANDSCAPING AND PARKING

ORDINANCE NO. 3568 - ORDINANCE TO CONDITIONALLY ZONE PROPERTY LOCATED AT CHARLOTTE STREET AND CELIA STREET FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT AND RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT TO NEIGHBORHOOD BUSINESS DISTRICT/CONDITIONAL ZONING FOR THE USE AS THE PRESERVATION SOCIETY'S OFFICE

Mayor Bellamy opened the public hearing at 6:47 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to conditionally zone property located at Charlotte Street and Celia Street from RM-6 Residential

Multi-Family Low Density District and RS-4 Residential Single-Family Medium Density District to Neighborhood Business District/Conditional Zoning for the use as the Preservation Society's Office; and a request for modifications with respect to sidewalks, landscaping and parking. This public hearing was advertised on December 28, 2007, and January 4, 2008.

Ms. Cogburn said that the City of Asheville and the Asheville-Buncombe County Preservation Society have requested the conditional zoning of one parcel at 324 Charlotte Street. The property, containing 3.16 acres, is currently zoned RS-4 (Residential Single-Family Medium Density District) and RM-6 (Residential Multi-Family Low Density District). The site contains an existing historic office building containing approximately 1000 square feet. The rest of the property is an open/passive park space.

The applicants are requesting rezoning to NB (Neighborhood Business) Conditional Zoning in order to utilize the existing small office building on the property for the headquarters office for the Asheville-Buncombe County Preservation Society. The building has been vacant for over ten (10) years and is suffering from deterioration and neglect. The Preservation Society has received approval for a lease agreement from the City and proposes to spend approximately $100,000 to restore the building. The building will not be altered except to provide for handicapped access, replacement of mechanical and plumbing elements, and general maintenance and repair to both the interior and exterior of the building. No vehicles will be driven over the park property except for construction contractor's trucks which will need access to the back of the building during initial construction.

While it appears that the extent of the renovations would require the site being brought into full compliance, due to the historic nature of the property and the interests of the neighborhood in seeing the park remain undisturbed, staff is recommending modifications to required landscaping, off-street parking, and sidewalk provisions of the Unified Development Ordinance. These modifications, due to the size of the building and the extensive tree canopy surrounding the building, are minor. Parking can be accomplished with on-street parking along Charlotte and shared parking arrangements with the Unitarian Church. The staff is further supportive of these modifications and this approval as this same proposal was previously granted (2001) by the Asheville City Council as a conditional use rezoning. The Preservation Society is returning for rezoning as the approval lapsed due to lack of work and the zoning reverted back to the previous zoning designations. As previously approved, staff will recommend this conditional zoning be limited to office use for a public purpose and that the park area remain in its current configuration. This rezoning will also carry with it the NB requirement that all operations occur between the hours of 7:00 AM and 10:00 PM.

The Asheville Planning and Zoning Commission added the conditions that:

1. Retail sales be limited only to what is produced or sponsored by the Preservation Society.
2. Only attached signage will be allowed and shall be limited to four square feet.
3. No additional lighting is allowed.

The Technical Review Committee (TRC), at their meeting on November 5, 2007, reviewed the conditional zoning request and made a positive recommendation (with conditions) that the project be forwarded to the Planning and Zoning Commission.

The Asheville Planning and Zoning Commission at their meeting on December 5, 2007, unanimously (5-0) recommended approval of this conditional zoning to Asheville City Council. Two people spoke at the meeting one in favor of the proposal and one concerned about parking and rezoning the entire property.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use

permits set out in Section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. That the proposed use or development of the land will not materially endanger the public health or safety.

   The applicant is seeking the ability to use the building on the property as an office for the Preservation Society of Asheville and Buncombe County. The building is currently vacant and in a deteriorating state. The project, if approved, must meet the technical standards set forth in the City's Unified Development Ordinance and Standards and Specifications Manual. The existing site plan shows compliance with most of the City's development standards except those for which a modification is needed.

2. That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.

   The applicant is requesting modifications so that the site on which the building is located will remain untouched. This includes leaving all vegetation.

3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.

   This property has historically been used as an office in the middle of a predominately residential area although the office has been vacant for over ten years. The proposed use will be very low in impact with no alterations to the existing park or building.

4. That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

   As stated above, the proposal is for the renovation of an existing structure to allow the structure to be used as it has been used historically. It is a small building in comparison with others in the vicinity. The applicant agrees to limit operational hours to those between 7 AM and 10 PM.

5. That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.

   Charlotte Street is shown as an Urban Neighborhood Corridor in the Asheville City Development Plan 2025. Such areas anticipate a mix of residential and compatible business uses. The plan also sets forth as a goal the pursuit of the compatible adaptive reuse of vacant or underutilized structures while assuring that neighborhood compatibility and pedestrian safety goals are met.

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

   The proposed use is located along Transit Route 5 on a major transportation corridor in the city. The project has received approval from the City's Technical Review Committee concerning issues of water, fire, police protection, etc.

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

The building is less than 1200 square feet in size and will be used for minimal daily office staff and occasional meetings. Traffic generation will be minimal.

Pros:

- Renovation for the reuse of an historic office building will restore a building to its original use and bring it out of its dilapidated state.
- The site plan shows no disturbance to the surrounding park land by this adaptive reuse.
- Limitations on use and hours of operation will mitigate any neighborhood disturbance.

Con:

- Parking on the street may disturb some residents in the vicinity.

Based on the above findings and the analysis provided in the report, staff and the Asheville Planning and Zoning Commission finds this request to be reasonable. The Commission recommends the approval of this conditional zoning request with the conditions as set forth in the TRC report and with the following added conditions:

- That the applicant will work with the City of Asheville to locate an appropriate on-street parking space in order to provide for handicapped parking and that the building renovation comply with the accessibility code to the maximum extent practicable.
- Hours of operation shall be limited to those between 7 AM and 10 PM.
- The building shall be limited to use as an office serving a public purpose.
- Only attached signage will be allowed and shall be limited to four square feet.
- No additional lighting is allowed.
- Retail sales must be limited only to what is produced or sponsored by the Preservation Society.

She said that there has been a lot of concern about rezoning the entire parcel. Staff feels rezoning the entire property is not necessary, but there is no need to split it up. With conditional zoning, the site plan goes with the rezoning, so there is no way anyone could use any other portion of this property for business purposes, other than the office building. If there is an interest by Council to rezone only a portion of the property, staff would have to have our Engineering Department do a survey of the portion to be split-zoned. Again, this could be done, however, staff feels it's not necessary.

Mr. Jim Coman, President of the Preservation Society, spoke in support of the conditional zoning request and assured Council they would be a good neighbor.

The following individuals spoke in support of the Preservation Society's use of the Grove Office but in opposition of rezoning the entire parcel for various reasons, some being, but are not limited to: the park may become more vulnerable to development in the future; if the entire parcel is rezoned, request that a condition be made that the park is to remain a park; concern about parking on Celia Place; request for language to be specific about what is produced or sponsored by the Preservation Society; if the entire parcel is rezoned, request for the park to revert to it's original use after it is vacated by the Preservation Society; make it explicit that there will be no new pavement for sidewalks or parking poured on E.W. Grove Park; and be explicit by stating that there will be no change in E.W. Grove Park or conversion of any part of it to some narrower use except for the Preservation Society's rehabilitation and use of the existing structure:

Ms. Grace Curry, President of the Grove Park-Sunset Mountain Neighborhood Association
Ms. Gloria Destolli
Ms. Leah Karpen, resident on Charlotte Street
A resident on Celia Street
Ms. Jane Northway, area resident

Mr. Jake Quinn, resident on Sunset Drive

Mr. Alan Ditmore spoke in support of the rezoning since it a rezoning reduction.

Mayor Bellamy closed the public hearing at 7:06 p.m.

In response to Councilwoman Cape, City Attorney Oast said that the property was given to the City by the Estate of E.W. Grove for park purposes without deed restrictions.

Upon inquiry of Councilwoman Cape, Interim Planning & Zoning Director Shannon Tuch offered clarification of the benefits of conditional zoning - particularly in this case. By applying conditional zoning to the entire area ensures that the uses stated now and that the form of the park stays in that form and it can be enforced by the City of Asheville. Beyond that we have to look to private deed restrictions which are typically enforced privately. This empowers the City of Asheville to enforce the state of that park to remain as it is. By subdividing it, in theory, not that it's practical, we could do that - apply the conditional zoning only to the portion that is directly around the structure. But, there are uses that can occur in parks by right - ancillary, such as parking. If the rest of the property remains in an RS-4 state for a park use, it is possible in the future that someone could come in and install some parking for that park. With the conditional zoning they would not be able to do that. The plan does not show any pavement or parking now.

Councilwoman Cape moved for the adoption of Ordinance No. 3568, to conditionally zone property located at Charlotte Street and Celia Street from RM-6 Residential Multi-Family Low Density District and RS-4 Residential Single-Family Medium Density District to Neighborhood Business District/Conditional Zoning for the use as the Preservation Society's Office, and approval of the modifications with respect to sidewalks, landscaping and parking, subject to the conditions recommended by staff and the Planning & Zoning Commission (finding that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation and with the standards below: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; and (5) This project will undergo final review by the TRC prior to issuance of any required permits. This motion was seconded by Councilman Newman.

Vice-Mayor Davis was concerned about parking on Celia Street. Mr. Coman responded that he has met with the City's Traffic Engineer on this issue and they both agreed that the safest parking is on Charlotte Street north of Macon Avenue. In addition, the Unitarian Church has renewed their agreement to allow the Preservation Society to park in their parking lot when there are no church functions.

Councilman Newman asked if we could include in a provision that other than the single office, it is the intent of City Council that the remainder of the land be preserved as open space in perpetuity. It was the consensus of Council to add that provision in the motion.

In response to Councilman Russell, Mr. Coman said that only one occupant would be in the office primarily Monday-Friday. His full Board however, consists of 18-19 people. At Councilman Russell's request, Mr. Coman said that he would be happy to direct his Board on where to park.

Councilwoman Cape noted that not all traffic parked on roads is a bad thing. She wondered if we could receive some feedback from our Traffic Engineer about the idea of parking by permit on streets in residential areas.

Upon Councilwoman Jones' suggestion of a friendly amendment to the lease about not parking on Celia Street, Mr. Coman said that if an amendment is necessary, they would work on it. City Attorney Oast also noted that they will work with the Preservation Society to address Council's concern.

In response to Mayor Bellamy, Mr. Coman said that the City's Traffic Engineer feels that for a business like this that has no off-street parking there is no requirement for a handicapped space. However, they will have one space designated for the handicapped and parking for everyone else will be on Charlotte Street above Macon Avenue.

In response to Councilman Newman, City Attorney Oast said that he will clarify the condition to make sure that in addition to the Society's sponsored merchandise it be clearly incidental to the principle use.

Ms. Cogburn responded to Councilman Mumpower when wondered if there were other things that we could do to bring that space to life as a park since he felt it is an under-utilized space.

The motion made by Councilwoman Cape and seconded by Councilman Newman (with the provision that other than the single office, the remainder of the land be preserved as open space in perpetuity) carried unanimously.

ORDINANCE BOOK NO. 24 - PAGE 289

CLOSED SESSION

Mayor Bellamy announced that City Council will conduct their closed session during the break. Therefore, at 7:30 p.m., Councilman Mumpower moved to go into closed session for the following reason: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: State of North Carolina, County of Buncombe, City of Asheville, Asheville Metals Recycling and VG Enterprises - The statutory authorization is contained in G.S. 143-318.11(a) (3). This motion was seconded by Councilwoman Jones and carried unanimously. Mayor Bellamy announced that Council will reconvene at 8:00 p.m.

At 8:00 p.m., Councilman Newman moved to come out of closed session. This motion was seconded by Councilwoman Cape and carried unanimously.

B. PUBLIC HEARING TO CONSIDER REZONING A PORTION OF PROPERTY LOCATED AT 2360 SWEETEN CREEK ROAD FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT AND RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT TO CI COMMERCIAL INDUSTRIAL DISTRICT

ORDINANCE NO. 3569 - ORDINANCE TO REZONE A PORTION OF PROPERTY LOCATED AT 2360 SWEETEN CREEK ROAD FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT AND RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT TO CI COMMERCIAL INDUSTRIAL DISTRICT

Mayor Bellamy opened the public hearing at 8:05 p.m.

Urban Planner Blake Esselstyn said that this is the consideration of an ordinance to rezone a portion of property located at 2360 Sweeten Creek Road from RM-16 Residential Multi-Family High Density District and RS-2 Residential Single-Family Low Density District to CI Commercial Industrial District. This public hearing was advertised on December 28, 2007, and January 4, 2008.

He said that the Givens Estates, Inc., is requesting a rezoning of a 15.2-acre portion of a parcel of land from RS-2 and RM-16 to CI. The parent parcel is a large United Methodist retirement community with a mix of multi-family and single-family residences as well as other amenities for the residents. The owners would like to have flexibility on this edge of the property to provide services such as a clinic or dentistry office, uses which would not be allowed under the current zoning.

Though more restrictive zoning districts would also provide a range of uses including those desired by the applicant, CI was requested because it matches the zoning on the other side of Sweeten Creek Road. The applicants did not wish to pursue a conditional zoning because they would prefer to leave multiple options open for development and not be restricted to a master plan.

More than half the perimeter of the subject area (to the northwest, north, northeast, east, and southeast) borders on property which is also owned by the applicant. The only area adjacent to the subject area which has a residential zoning designation is part of the Givens Estates property. The bordering areas which are not owned by the Givens Estates are zoned either Industrial or Commercial Industrial.

Construction on the Givens Estates began roughly thirty years ago. Under the zoning that preceded the UDO, the area was zoned OI, or Office-Institutional. Now the retirement community property is zoned a mix of RM16 and RS2. The intent of RM16 is to permit a full range of high density multi-family housing types along with limited institutional, public and commercial uses appropriate within high density residential areas. The intent of RS2 is to establish a low density for single-family dwellings and other compatible uses in recognition of environmental constraints such as, but not limited to, steep slopes, impervious soils, high water tables, and flooding. Accordingly the RS2 district mostly extends over the areas of highest elevation and steep slope on the larger Givens Estates land.

The Commercial Industrial District was established to provide areas for a wide range of commercial and industrial uses. The extent of development that would be possible on this subject area is substantially limited, however, by the terrain. The entire subject area would be subject to steep slope development standards, with roughly one-third of the area at more than 2,350 feet in elevation. Further, the areas along Sweeten Creek Road are among the steepest on the site, so many kinds of typical roadside development would be precluded by the grading limits imposed.

The zoning district that would be drawn with the proposed rezoning would have one side that would not follow a property line, thus making the parent parcel more split-zoned than it already is. The applicant, however, is in the first stage of pursuing a subdivision that would separate the subject area from the parent parcel, as the discrete property boundaries would eliminate the split-zoning and facilitate the application of the steep slope development standards as well as other review of development this site.

Staff recognizes that situating new Commercial Industrial zoning immediately adjacent to residential development in ordinary circumstances might not be advisable. However, two characteristics of this site make this request different: first, development standards (particularly steep slope restrictions) prevent intense development of the site, and second, the owner of the residentially zoned land that could be adversely affected is the applicant itself. It would be

contrary to the applicant's own interests to develop the site under the proposed rezoning in a way that is incompatible with the community it oversees.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:

- Highly compatible with zoning to south and west.
- Applicant's self-interest serves to protect residential areas from unsuitable use of the site.
- Steep slope standards and other development standards preclude intense development.
- Infrastructure is in place to support non-residential use.

Cons:

- Until subdivision is completed, proposed rezoning would further split-zone an already split-zoned parcel.

Though a first glance at a two-dimensional map might suggest a transitional district might be more appropriate, staff is of the opinion that the topography and neighboring ownership indicate that future development under the proposed CI zoning would befit the site.

Mr. W. Louis Bissette, Jr., attorney representing the Givens Estates, spoke in support of the rezoning. He said they are proud of what has been accomplished on this property over the past 30 years and hoped to move forward on a subdivision plan for a geriatric and dental clinic on the property.

Mayor Bellamy closed the public hearing at 8:14 p.m.

In response to Councilwoman Cape's questioning related to the property or it's anticipated use of a clinic being non-taxable, Mr. Bissette said that he could not imagine the Givens Estates using this property for anything other than services which would benefit their residents.

Mr. Esselstyn responded to Councilman Newman about the steep slope ordinance as it relates to this property. He noted that the Givens Estates already have the ability to clear a certain percentage of the site now.

Councilman Mumpower said that a large percentage of Asheville is made up of non-profit agencies who don't pay property taxes. He hoped that Council when Council looks at our legislative issues that we ask our legislators to help us address that issue.

Mr. Ken Parton, Director of Givens Estates, said that 1/3 of their residents are below the poverty level, 1/3 are middle income and 1/3 are comfortable. In the State of North Carolina, for non-profit continuing care retirement communities to maintain their non-profit status, they must have 5% benevolent care. Givens Estates does in excess of 5% which is considered on a par of what they would be paying in property taxes. The benevolent care can be in the form of direct care to residents or it can be in the form of community benefit - providing services to the larger community. They do both. He explained that the requirements for admission for those below the poverty level is they have no assets or income. He said that they do not take Section 8 vouchers, however, they do have 202 Section 8 housing on their campus.

After Mayor Bellamy noted that she is no longer employed by Mountain Housing Opportunities (MHO), she clarified that the developments completed by MHO actually pay property taxes. Also, the Habitat for Humanity's houses that they develop also pay property taxes. It is not an across the board blanket statement that all non-profits don't pay property taxes.

Councilwoman Jones moved for the adoption of Ordinance No. 3569, and finds that the request is reasonable based on the information provided in the staff report and as stated in the staff recommendation. This motion was seconded by Councilman Mumpower and carried unanimously.

ORDINANCE BOOK NO. 24 - PAGE 292

C. PUBLIC HEARING TO CONSIDER THE INITIAL ZONING OF PORTIONS OF RECENTLY ANNEXED PROPERTIES KNOWN AS 420 AIRPORT ROAD TO HIGHWAY BUSINESS DISTRICT

ORDINANCE NO. 3570 - ORDINANCE TO INITIALLY ZONE PORTIONS OF RECENTLY ANNEXED PROPERTIES KNOWN AS 420 AIRPORT ROAD TO HIGHWAY BUSINESS DISTRICT

Mayor Bellamy opened the public hearing at 8:25 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to initially zone portions of recently annexed properties known as 420 Airport Road to Highway Business District. This public hearing was advertised on December 28, 2007, and January 4, 2008.

The City of Asheville has recently completed the voluntary annexation (effective October 31, 2007) of a 1.97 acre tract located at 420 Airport Road in South Buncombe County. A restaurant building is close to completion on the property. This parcel was zoned Employment under Limestone Township zoning in Buncombe County.

Other properties in the Airport Road/Rockwood Road area that are within the City's jurisdiction are zoned Highway Business. Staff proposes, at the request of the property owner, the same zoning for this parcel. The Technical Review Committee had no issues with the zoning classification.

At a meeting on November 7, 2007, the Planning and Zoning Commission unanimously recommended this initial zoning to HB to the Asheville City Council. No one spoke concerning this item.

Pro:

- Zones property recently taken into the City of Asheville in consideration of the surrounding zoning and land use and the City's Comprehensive Plan.

Con:

- None noted.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Mayor Bellamy closed the public hearing at 8:26 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Russell moved for the adoption of Ordinance No. 3570 and finds that the request is reasonable based on the information provided in the staff report and as stated in the staff recommendation. This motion was seconded by Vice-Mayor Davis and carried unanimously.

ORDINANCE BOOK NO. 24 - PAGE 297

D. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE CLARIFYING STANDARDS REGULATING THE DISPLAY OF FLAGS

ORDINANCE NO. 3571 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE CLARIFYING STANDARDS REGULATING THE DISPLAY OF FLAGS

Mayor Bellamy opened the public hearing at 8:26 p.m.

Interim Planning & Development Director Shannon Tuch said that this is the consideration of an amendment to the Unified Development Ordinance (UDO) clarifying standards regulating the display of flags. This public hearing was advertised on December 28, 2007, and January 4, 2008.

Events from earlier this year have caused staff and Council to examine the City's current sign code standards in an effort to understand how they may (or may not) affect the display of the American flag. Of particular concern was how to clearly distinguish when the flag is being flown as a patriotic display versus when it is being used as signage to designate or draw attention to a site or particular sale - to use the flag in such a manner would not be accordance with either City code or the federal guidelines set forth in Title 4, Chapter 1 of the US Code.

On July 12, 2007, staff presented several options for Council consideration but recommended a clarification to City code that stated in order for a flag to be exempt from regulation that it must be flown in accordance with federal guidelines. After a small amount of discussion, Council recommended that staff seek input from the Mayor's Task Force on Veteran Affairs and report back. Staff met with the group on August 28, 2007, where the group discussed the matter at some length and voted unanimously to support staff's recommendation to clarify that American flags flown in accordance with federal guidelines would be exempt from regulation. Those flags not flown in accordance with federal guidelines would be restricted and regulated by the standards set forth in Article XIII regulating signs.

Similarly, on November 7, 2007, the Planning & Zoning Commission reviewed this proposed amendment and also unanimously approved the change (no discussion).

Other items of Note:

- Signs have been regulated in the City of Asheville since 1977, including the use of flags as signage.
- The sign code was further modified and adopted as part of the *Unified Development Ordinance* in 1997 and outlines a number of standards required for both permanent and temporary signage set forth in Article XIII.
- Article II defines "sign" as:
  Sign means any words, lettering numeral, parts of letters or numerals, figures, phrases, sentences, emblems, devices, designs, trade names, or trademarks by which anything is known, made of any material, except live vegetation, including any surface, fabric or other material background structure designed to carry such devices, as are used to designate or attract attention.
- There are a number of prohibitions listed when it comes to signage, once such prohibition is in regards to flags where Sec. 7-13-3(a)(17) reads:

  (17) Flags, decorative or otherwise, may not be used in conjunction with a commercial promotion or as an advertising device, or as an integral part of a sign

regulated under this article. Flags that comply with the provisions set forth in section 7-13-2(c)(3) of this chapter are not subject to this subsection.

- The City's sign code also sets forth a number of exemptions to the sign code; the above referenced Sec. 7-13-2(c)(3) falls under this section and reads:

  (3) Flags, with insignia of any nation, organization of nations, state, county or city, any religious, civic or fraternal organization, or any educational or cultural facility and/or any one corporate flag per lot.

Based on this information, the American flag is clearly exempt from regulation unless "used in conjunction with a commercial promotion or as an advertising device" as noted in #17 above. It has been staff's understanding that the arrangement of these standards is to ensure that all citizens and business owners enjoy the right to fly the flag but not to the extent that it becomes exploited for commercial gain. It should also be noted that our local standard mirrors the federal standard set forth in Title 4, Chapter 1 which reads, "The flag should never be used for advertising purposes whatsoever." This amendment simply seeks to codify this interpretation.

Pros:
- Clarifies existing standards.
- Provides objective measures by which enforcement personnel can evaluate use.
- Revision would bring existing City ordinances in closer alignment with federal code.

Con:
- Requires more compliance and oversight from business owners.

Staff recommends City Council approve an ordinance amending Chapter 7 of the Code of Ordinances of the City of Asheville clarifying standards regulating the display of flags.

Mr. Alan Ditmore, Leicester resident, was concerned about singling out the American Flag for special consideration relative to other flags, i.e., the N.C. Flag, Confederate Flag, etc.

Mayor Bellamy closed the public hearing at 8:29 p.m.

Councilman Mumpower felt we should not be involved in the flag business in that it takes staff time, adds another level of bureaucratic overlay on the citizens of Asheville, and we should not be doing the federal government's work.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Newman moved for the adoption of Ordinance No. 3571. This motion was seconded by Councilwoman Jones and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 24 - PAGE 306

E. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE WHICH PROPOSES SEVERAL MINOR CLARIFICATIONS AND CORRECTIONS TO THE ORDINANCE

ORDINANCE NO. 3572 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE WHICH PROPOSES SEVERAL MINOR CLARIFICATIONS AND CORRECTIONS TO THE ORDINANCE

Mayor Bellamy opened the public hearing at 8:31 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an amendment to the Unified Development Ordinance (UDO) for the purpose of filling in missing information, correcting mistakes, resolving discrepancies and clarifying the ordinance. This public hearing was advertised on December 28, 2007, and January 4, 2008.

Working with the UDO on a daily basis, the staff of the City of Asheville Planning and Development Department has noted a number of places where the ordinance contains discrepancies, is incomplete, or needs clarification. Staff has compiled a list of these issues and proposes the following amendments to correct some of these situations. This is the first of two or three proposed "housekeeping" amendments that staff is drafting to make the UDO a clearer document for staff and public use. The proposed amendments deal with a variety of issues throughout the ordinance. The following list gives a basic rational for each of the listed amendments.

a) Clarifies staff interpretation on treatment of parking structures when calculating gross floor area.
b) Brings the definition of major subdivision in line with state statutes and eliminates the inclusion of public utility extensions in the definition of major subdivision.
c) Brings the definition of minor subdivision in line with state statutes and eliminates the inclusion of public utility extensions in the definition of minor subdivision.
d) Corrects the process description for preliminary plat review.
e) Same rationale as cited in b) above.
f) Same rationale as cited in c) above.
g) Adds a subsection (2) to clarify how staff will review the sufficiency of protest petitions when not in simple ownership forms (e.g., when in homeowner's association or corporate ownership, etc.). Proposed by City Attorney's office.
h) Minor typographical correction – plural to singular.
i) Minor typographical correction – cite to incorrect zoning district.
j) Minor typographical correction – omission of a use in listing of conditional uses in CBD.
k) Brings the buffering requirements for the Blue Ridge Parkway Overlay District in line with the new landscaping standards.
l) Deletes a provision that conflicts with another in the UDO concerning setbacks along major thoroughfares.
m) Deletes a confusing/conflicting provision in the new retaining wall ordinance.
n) Improvement for safety of sidewalk clearance from sandwich board signage from 4 feet to 6 feet.
o) Minor typographical correction – omission of listing in use by right subject to special requirements listings.

Pros:

- The UDO will be more easily understood and interpreted by staff and the public.
- The intent of the ordinance will be made clearer and less subject to legal challenge.

Con:

- None identified.

At a meeting on December 5, 2007, the Asheville Planning and Zoning Commission unanimously (5-0) recommended approval of these wording amendments to the Asheville City Council. No one spoke on the matter.

Staff recommends City Council approve an ordinance amending Chapter 7 of the Code of Ordinances to make numerous minor corrections and clarifications.

Mayor Bellamy closed the public hearing at 8:32 p.m.

Councilman Mumpower was conflicted on the UDO modifications and felt we are creating more regulatory overlay. He asked for assurance that these do not contain any substantial changes. Ms. Cogburn assured Council that this is the first of three groupings that staff will bring forward to Council. These are the non-sensitive issues, however, they will go into greater detail on the substantive issues.

In response to Councilwoman Cape, Interim Planning & Development Director Shannon Tuch explained the amendment regarding improvement for safety of sidewalk clearance from sandwich board signage from 4 feet to 6 feet.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3572. This motion was seconded by Councilman Russell and carried unanimously.

ORDINANCE BOOK NO. 24 - PAGE 301

V. UNFINISHED BUSINESS:

A. RESOLUTION NO. 08-06 - RESOLUTION REGARDING PROPOSED INCORPORATION OF THE TOWN OF LEICESTER

City Attorney Oast said that back in June of 2007, Council heard a presentation from residents of the Leicester area regarding their effort to incorporate. Following that presentation and some discussion by Council, there was a motion made to approve Leicester's incorporation request. That motion failed for lack of a second. Since the June meeting, Leicester representatives have continued to discuss this matter. He has revised the draft ordinance to include language expressing the City's concern regarding urban service delivery, and a proposed charter provision restricting Leicester's ability to annex. Leicester has made two changes since the June meeting as follows: (1) staff is advised that the boundaries for the proposed new town include substantially all of the existing Leicester township, but have been slightly adjusted to exclude a portion of the City's extraterritorial jurisdiction area (ETJ) that is in the Leicester Township; and (2) they have agreed to incorporate into their Charter that the proposed Town of Leicester will not involuntarily annex any area outside its town boundaries. Staff is still concerned about the size of the area of 67 square miles opposed to Asheville's 44 square miles. A lot of it would not qualify for annexation. The services are basically a continuation of what already exists in the County. We understand that two deputies will be added to the Buncombe County Sheriff's Department and will be paid for from tax money and other funds raised by Leicester. Buncombe County will continue to do the zoning in the area - most of the area is zoned Open Use category and some small parts zoned to more particularized categories. Council needs to consider from a policy standpoint that even though this is not a contiguous annexation to the City of Asheville, it is an incorporation almost right at our doorstep. There are some geographical limitations in the City's area of Leicester Township, but if Leicester is incorporated, Council will essentially be foreclosing any opportunity for the City to grow in that direction. Asheville is already limited regarding growth in some areas like Woodfin and Biltmore Forest. In addition, there is also the potential of a sales tax revenue loss of approximately $20,000.

Ms. Pat Cochran, representing the proposed Town of Leicester, pointed out that this is the third time a representative has come before Council. Their main reasons for seeking incorporation are (1) to elect people from our community to govern our town; (2) to maintain the unique character of the Leicester area, including enacting their own ordinances to protect their way of life; (3) to build and/or improve community facilities for their town; and (4) to benefit from the money they are not currently receiving because they are unincorporated. The City's staff

report states that property tax revenues will bring in $200,000 to their new town. It fails to reveal the many other sources of revenue the town will use to provide, not only for required services, but also to fund enhancements and improvements for the benefit of Leicester. These sources include sales and use tax; franchise tax; beer and wine tax; as well as grants and other monies. These additional revenues are substantially more than $200,000. Yet, also according to the staff report, the only financial impact the incorporation of Leicester will have on the City of Asheville is a loss of $20,000. Less than two decades ago Leicester was a two way road and today the five-lane highway extends more than four miles from Patton Avenue and an additional five miles is slated to be widened within the coming years. The road widening was followed by the commercial development explosion along that corridor and that growth continues further into the Township every day. Currently under construction on Leicester Highway just 10 miles from Patton Avenue is a planned residential community where 103 detached homes will be located on 20 acres. The rapid changes taking in their community provide even more reasons to incorporate. On January 28, 2007, in an article, then Planning & Development Director Scott Shuford said the Leicester area isn't included on planning maps showing locations the City might target for annexation in the future. In the same article, Buncombe County Planner Jim Coman said there is little danger of Leicester being annexed because the area is so rural and lacks water and sewer service which Asheville would have to spend a lot to provide if it took in the area. Mr. Coman said "there is nothing out there that I think Asheville would be interested in at this point - it's not urban enough." The staff report also says that due to significant topographic and service delivery issues, the City of Asheville's annexations in this area have been slower than they have been in the south and west. Since the topography of the township has not changed, nor have there been any major improvements affecting service delivery, those two issues will likely remain as problems for Asheville. If the City of Asheville isn't going to take care of the needs of the citizens of the Leicester Township then the citizens of Leicester must take care of themselves. Incorporation is the instrument by which they can do just that. Interest in forming the Town of Leicester has been strong for many years. More than 2.5 years ago that interest was formalized into a group and the long process of incorporation was begun. All of their actions have been publicized. The group held information public meetings; collected signatures in favor of incorporation; researched population and census data; chose the town services; set the tax rate; wrote the Charter; selected an interim council; developed a budget; published letters of intent; and prepared an application of incorporation that was sent to Raleigh. A small but important part of the lengthy process is to provide Raleigh a resolution from the City of Asheville supporting Leicester's incorporation efforts. More than a year ago, letters advising of the intent to incorporate the Town of Leicester were mailed to municipalities, including Asheville and Woodfin. The letter and the notice published in the Asheville Citizen-Times clearly stated that the area to be included in the Town of Leicester coincides with the boundary lines of the current Leicester Township. No communication of concern about their incorporation effort was received from any municipality, including Asheville and Woodfin. A tiny portion of their proposed town is located within Asheville's ETJ. It has always been and is still their preference to incorporate the entire township, rather than splitting off that small piece. However, to do so would be prohibitive due to the cost of obtaining a survey to adequately describe the amended town boundaries. They do not wish to expand outside these township lines and to that end they are willing to state in their Charter that the Town of Leicester will not involuntarily annex any areas outside its town boundaries. The Committee on Municipal Incorporations in Raleigh will decide whether to give a positive or negative recommendation on their incorporation application to the General Assembly. If their recommendation is favorable, the legislators will vote to approve or disapprove the incorporation of Leicester. By affirmatively approving the resolution tonight, Council will in no way be voting to actually incorporate Leicester. That decision lies in the hands of a Committee on Municipal Incorporation and the General Assembly. They are confident of the success and viability of the Town of Leicester. They ask for Council's support of Leicester's incorporation efforts by voting to approve the resolution tonight.

Mr. Alan Ditmore, Leicester resident, spoke in support of the incorporation efforts by Leicester.

Rev. Christopher Chiaronmonte urged Council to support Leicester residents in their incorporation and be good neighbors.

Councilman Mumpower noted that being a city is not easy and even though you will be in charge of your own destiny, when you look at the controls and the demands the State of North Carolina exerts on its cities, there is a long hard road ahead of you. Personally he supported consolidation, but in the interim, he would support Leicester's efforts.

Councilman Mumpower moved to support the resolution regarding proposed incorporation of the Town of Leicester: "(1) The City of Asheville approves the incorporation effort of the Township of Leicester, but expresses the following concern: That the size of the area proposed for incorporation will present practical difficulties in delivering urban services; (2) The proposed Town of Leicester will include in its Charter that it will not involuntarily annex any area outside its town boundaries; and (3) The City Attorney is directed to transmit a certified copy of this resolution to the Commission." This motion was seconded by Councilman Russell.

Councilman Russell had a lot of concerns about future impacts. He worried about Leicester residents and the $200,000 in revenue and the expenses in developing a government for an area the size of Washington, DC. He questioned a resident living off Leicester Highway four miles up, compared to someone in the outskirts of Leicester who will be paying the same taxes and getting a lot of different benefits. He questioned whether the group who brought this together really polled and talked with the entire community from the borders of Asheville all the way to the border of the northern counties. He has read somewhere that the group that will ultimately approve this has the option of taking this to a referendum. He's not a fan of excess government, but if there is ever an opportunity for something this monumental, that should be heard by the voices of the Leicester residents.

Councilman Newman favored the community of Leicester being incorporated if that is the desire of the community. He's also supportive of the idea of Swannanoa being incorporated if that's their desire. In both cases, his question is what are the logical boundaries of those new towns. The vast majority of the land will never be a part of the City of Asheville. But when you look at that proposal and you look at the other towns in Buncombe County, there is a huge disconnect. The boundaries of the other towns and cities in Buncombe County reflect the natural boundaries of those towns. Before he could vote for more than just the concept for incorporation, he would need to have a conversation about which boundaries make sense. Asheville is a growing community and if we are going to support one another in this effort we need to have some kind of agreement about what areas are logically a part of the future of Leicester and what areas are logically a part of the City of Asheville. Asheville's boundaries are not allowed to expand in areas that truly meet the criteria except through the process of involuntary annexation which most times the City is forced to defend in a lawsuit. He would not support the present motion for Leicester's incorporation to be 68 square miles, but would support a motion that our body endorse incorporation for Leicester if that is what the people there want, but that we then also create some kind of process to enter into a dialogue with the community of Leicester, as well as Swannanoa, to talk about what we see as the future growth of our community, what you see as the natural boundaries of your communities and hopefully we can support one another in developing that future vision for all our communities as a whole.

Councilwoman Cape agreed that there is probably a town of Leicester that wants to be incorporated but she couldn't see 68 square miles as a town.

In response to Councilwoman Cape, City Attorney Oast said that they don't have to meet the same standards as annexation for incorporation. The Town of Mills River is a perfect example of that. It's a rural area that would not qualify for an involuntary annexation, but they were allowed to incorporate.

Councilwoman Cape agreed with the State in giving cities and towns the opportunity to incorporate to oversee people living closely togetner. Counties were developed to see people living in a larger reach. What Leicester is proposing looks like a duplication of the County's services that are existing, except perhaps the street lighting program. She didn't understand how that large of an area can be seen to be really adding much to the County residents benefit in that area. She is supportive of talking about the incorporation of the Town of Leicester on a much scaled back size that makes more geographic and density sense. We all need to work together for regional land use vision. She would not support the resolution as stated, but would like to continue dialogue about it and to lend Leicester residents support for encouraging their way of life without having to go to these steps.

Vice-Mayor Davis supported Leicester's incorporation on a smaller scale. He would also like to see us work together on what Asheville and Leicester's future holds. He would not support the motion as presented.

Mayor Bellamy, resident off Leicester Highway, acknowledged the area has grown. She noted that a city is a lot of work. She will support the motion. She looks forward to working with Leicester on management issues on how each city can grow. She requested Leicester receive City water and work with Asheville to see the areas where the water lines make sense. As Mayor, she doesn't like other governing bodies to tell her how to do business in the City of Asheville, so it would be very difficult for her to say that to others. If Leicester is incorporated as a town, she looked forward to working with them. Even if they are not incorporated, she would look forward to continued dialogue on how we can work together and grow together as a community. In addition, Council will be discussing a resolution establishing boundaries for use in a proposed annexation agreement with the Town of Woodfin. Asheville will be committing to Woodfin that we won't annex into their area so that is another reason why she will support the resolution regarding Leicester's incorporation.

City Attorney Oast responded to Councilman Newman's question regarding a referendum

There was a brief discussion initiated by Councilwoman Jones about whether the Commission has the ability to draw the boundaries differently than presented. City Attorney Oast said that there is a process for modifying petitions to delete certain areas on recommendation of the Commission. The majority of the interim governing board would have to agree to that.

In response to Councilwoman Jones, Ms. Cochran said that their agreement with Buncombe County is in addition to what is currently existing, they would have two dedicated deputies for their territory.

Upon inquiry of Councilwoman Jones, City Attorney Oast was not sure how, or if, Asheville Powell Bill funds would be affected.

In response to Councilwoman Cape of the difference between a township and a town, Ms. Cochran said that a township is an unincorporated part of the county and a town is an incorporated municipality.

Councilwoman Cape offered a friendly amendment to add at the end of number (1) The City of Asheville approves the incorporation ... but expresses the following concern: that the size of the area proposed for incorporation will present practical difficulties in delivering urban services and Asheville encourages Leicester to reconsider the size of their boundaries.

Councilman Mumpower, who made the original motion, did not accept the friendly amendment in that it is not Asheville's decision on whether Leicester incorporates or not, it's Raleigh's decision.

Vice-Mayor Davis' concern is what Leicester's incorporation does for the City he represents. We need to at least have the opportunity to see what develops near our perimeter to become a part of Asheville. If there was some reasonable conversation about the size of the township, he felt he could support an incorporation.

Councilman Newman said that whether the motion passes or not, he hoped that we could develop a process to have some representatives from Council to sit down with representatives from Leicester to talk further about incorporation and future growth.

The motion made by Councilman Mumpower and seconded by Councilman Russell failed on a 3-4 vote, with Mayor Bellamy, Councilman Mumpower and Councilman Russell voting "yes" and Vice-Mayor Davis, Councilwoman Cape, Councilwoman Jones and Councilman Newman voting "no."

Councilwoman Jones moved to support the resolution regarding proposed incorporation of the Town of Leicester: "(1) The City of Asheville approves an incorporation effort of the Township of Leicester, but expresses the following concern: That the size of the area proposed for incorporation will present practical difficulties in delivering urban services and requests continued dialogue regarding boundaries that are mutually beneficial to both entities; (2) The proposed Town of Leicester will include in its Charter that it will not involuntarily annex any area outside its town boundaries; and (3) The City Attorney is directed to transmit a certified copy of this resolution to the Commission." This motion was seconded by Councilman Mumpower.

At Ms. Cochran's request, Councilman Newman said that we would be happy to meet soon especially since Asheville has growth issues before the legislators as well.

Mayor Bellamy thanked Leicester representatives for meeting with her and highlighting where they wanted to go. She looked forward to continuing that dialogue on how Leicester will deliver services and about how they want to grow. She thanked them for their commitment to continue to come to Council and appreciated Ms. Cochran fielding the questions in the manner in which she did.

The motion made by Councilwoman Jones and seconded by Councilman Mumpower carried unanimously.

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B. ASHEVILLE MERCHANTS HOLIDAY PARADE

Mayor Bellamy said that on November 27, 2007, the City received a proposal from the Asheville Merchants Corporation requesting the City of Asheville to take over the management of the Holiday Parade. As a result, Council directed staff to research and prepare a report on how other cities operate and manage holiday parades.

Most parades are operated by non-profit community organizations, such as a merchants association or a local civic organization, and do so with support in the form of allocated staffing costs for police, fire and logistics from its local municipal government. Of the parades researched, those operated directly by a municipal government are most often small in size with the exception of the City of Durham, North Carolina. Many parades operate via partnerships with two or more community groups, a volunteer parade committee and a municipal government.

Mayor Bellamy said that this month Council will be reviewing the co-sponsorship list for the year and even though we do not know who will run the Asheville Holiday Parade she asked that we still commit to co-sponsor that event as we have done for many years. This way, as the Asheville Merchants Corporation approaches groups to take over the management of the Holiday Parade, they will have a commitment from the City being a co-sponsor to the Parade.

Vice-Mayor Davis moved to commit to co-sponsor the Asheville Holiday Parade as we have done in the past. This motion was seconded by Councilwoman Jones and carried unanimously.

VI. NEW BUSINESS:

A. RESOLUTION NO. 08-07- RESOLUTION ESTABLISHING BOUNDARIES FOR USE IN A PROPOSED ANNEXATION AGREEMENT WITH THE TOWN OF WOODFIN AND SETTING A PUBLIC HEARING

City Attorney Oast said that this is the consideration of a resolution establishing boundaries for use in a proposed annexation agreement with the Town of Woodfin, and setting a public hearing on January 22, 2008.

Annexation agreements between municipalities are authorized in the N. C. General Statutes. Asheville and Woodfin share a boundary, and annexation in this area has recently been a subject of interest to both.

By letter dated November 5, 2007, Asheville Mayor Bellamy proposed to Mayor VeHaun of Woodfin a process for formalizing an annexation agreement that has been under discussion among officials of the two municipalities since last year.

In the absence of a response, Asheville City staff have prepared a proposed map and a drafted proposed agreement. Copies of these documents have been sent to Woodfin town officials. Woodfin's attorney and their Town Manager have each received a copy of this information and he was advised that Woodfin has their retreat later this month and he believed they would take this matter up then. They are not prepared at this time to move forward with an agreement. As Council knows, the recent voluntary annexation of the property belonging to Mr. Chris Peterson in the Richmond Hill area is on what would have been Asheville's side of the line. He does think that Asheville can still move forward with this agreement, just recognizing that that particular annexation cannot be undone and is now part of the Town of Woodfin.

Annexation agreements require adoption of an ordinance by the municipalities that are parties to the agreement, following a public hearing. Although the public hearings can be combined, there is no requirement that these actions occur simultaneously or in any particular sequence. The purpose of this presentation is to seek Council's guidance as to the proposed boundary, and if desired, to set a date for the public hearing that the City of Asheville is required to hold.

The Agreement as proposed is pretty basic, and provides in essence that neither party may annex (by any means) into the territory designated as the future growth area for the other. This does not mean that Asheville or Woodfin are going to annex within those areas, only that the other party may not. This also does not make it easier for either municipality to annex; the statutory requirements that an area must meet to quality for annexation continue to apply.

This would not affect the legislative boundary adjustment pending in the General Assembly and awaiting action in 2008, which affects the shared boundary and unincorporated area in the vicinity of UNC-A.

Pros:

- Establishes a boundary delineating the potential future growth areas for both municipalities
- Allows citizens in unincorporated areas to make informed decisions
- Reduces potential for competition over certain "annexable" areas

Con:

- Establishes one more procedural step for completing annexation

If Council desires to proceed with Asheville's part of the Annexation Agreement process, adoption of the resolution is recommended.

Councilman Mumpower said that he talked with Mayor VeHaun and he said that the map was not attached to the information sent to him. City Attorney Oast noted that that was just brought to his attention today and he would be happy to provide Mayor VeHaun with that map.

Councilman Mumpower felt that this matter should be delayed until more operational attention should be given to this matter on either a staff to staff level or a Mayor to Mayor level before we actually commit to an annexation agreement.

Urban Planner Blake Esselstyn responded to questions from Councilwoman Cape regarding how the boundary lines were drawn. She said that this resolution represents the last time she met with Mayor VeHaun.

Mayor Bellamy said that she has been working on this for almost two years and the Town of Woodfin has said that we have been stonewalling. She would be happy to continue to talk, but this is important since we have been talking about growing Asheville. We finally get an agreement with a Town who is annexing, growing and land-locking us to the north, so we need to be at the table and get an agreement.

Councilwoman Jones moved to adopt Resolution No. 08-07 and set the public hearing for January 22, 2008. This motion was seconded by Councilman Newma

Because the Town of Woodfin has annexed Mr. Peterson's property (at Mr. Peterson's request), even though discussion was occurring about this annexation agreement, Councilwoman Cape hoped Woodfin would work with Asheville on a healthy partnership. Mayor Bellamy said that she would relay that message.

Councilman Russell asked for a friendly amendment for the resolution to read that Council approves proceeding with Asheville's part of the annexation agreement process. That sounds more like we are putting the ball in their court in an official way that will open up the doors for communication. Councilwoman Jones and Councilman Newman each accepted the amendment.

Councilwoman Jones moved to adopt Resolution No. 08-07, as amended, and set the public hearing for January 22, 2008. This motion was seconded by Councilman Newman and carried unanimously.

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B. RICHMOND HILL PROPERTY

Mayor Bellamy said that the items regarding the Richmond Hill property have been removed from the agenda.

VII. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of November 2-29, 2007: PSNC Energy (Water), DeLund Walker (Water), Darrell James Rice (Transit), Jonathan Stephenson (Water) and Steve Bhandari (Sanitation).

The following claims were received by the City of Asheville during the period of November 30-December 20, 2007: Nimala Bishop (Fire), Betty Sams (Transit Services), PSNC Energy (Water), Tamara Parker (Police), Jasmin Development (Water), AT&T (Water), Carol Fisher (Fire), Buncombe County (Transit Services) and Troy B. Wyatt (Police).

These claims have been referred to Asheville Claims Corporation for investigation.

B. LAWSUIT

The City received a Complaint on December 11, 2007, from Bonny Wardlaw. The nature of the Complaint is to declare that Mr. Wardlaw is a validly elected member of the Asheville Civil Service Board, and that City Council not appoint a fifth member to the Board. This matter will be handled in-house.

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Ms. Lisa Bain Landis invited City Council to participate in a World Record Community Pot Luck Dinner on May 4, 2008. She would be advising Council on the event location. Mayor Bellamy suggested Ms. Landis meet with City Manager Jackson on how to obtain City support and participation.

Rev. Christopher Chiaronmonte spoke about using dramatic tools to give messages.

Board/Commission Vacancies

Vice-Mayor Davis announced the following vacancies on Asheville's boards and commissions: Alcoholic Beverage Control Board; Board of Adjustment; Citizens/Police Advisory Committee; Civic Center Commission; Community Relations Council; Sustainable Energy & Environment Committee; Fair Housing Commission; Film Commission; Firemen's Relief Fund; Greenway Commission; Metropolitan Sewerage District Board; Public Art Board; Transit Commission and Tree Commission. He said this is a great opportunity to be a part of government and urged citizens to get an application on line from the City's website or to call the City Clerk's Office.

When Mayor Bellamy asked if the application deadline of January 10, 2008, could be extended due to the holidays, it was the consensus of Council to have City Clerk Lipe meet with Vice-Mayor Davis, Chair of the Boards/Commissions Committee, to obtain a new deadline.

Councilwoman Cape said that the Sustainable Energy & Environment Committee is recently established with staggered terms. She hoped the ones given one-year terms would be given the opportunity to serve another term. Vice-Mayor Davis said he felt sure that the Boards/Commissions Committee would recommend their reappointment to serve a full three-year term.

Effort to Incorporate Leicester

When Councilman Newman asked if we should have an ad hoc committee of Council to meet with representatives of Leicester, it was Mayor Bellamy's understanding that all members of Council wanted to be present at the meeting. Mayor Bellamy said that City Clerk Lipe would verify that all members of Council could be available at the agreed upon meeting date and time.

Councilman Mumpower said he didn't feel the need to be a part of the discussion with Leicester representatives. He would support an ad hoc Council committee.

Vice-Mayor Davis felt that there is an opportunity to talk, he would be supportive of an ad hoc committee and he wouldn't need to be a part of it. He wasn't prepared to support the motion tonight without some opportunity for them to hear what City Council had to say about it.

Councilwoman Jones suggested this matter be reviewed by the City Council Planning & Economic Development (PED) Committee at their February meeting (because the Committee meets tomorrow and it would be short notice to Leicester's representatives).

Mayor Bellamy said the City Council PED Committee doesn't include all the members of Council who had concerns and wanted to discuss the matter.

Vice-Mayor Davis said that since the PED Committee is a public meeting, any member of Council who is interested could attend the meeting.

Councilman Newman felt it would be much more efficient to have a subcommittee of Council and he would be supportive of the PED Committee review.

Mayor Bellamy said that earlier in the meeting when this issue was discussed, she felt there was a desire for more interactive discussion between the present Council and their interim Council. In her opinion, she thinks they are expecting their interim Council will meet with the entire Council to discuss the issue sooner rather than later. The approved motion requested continued dialogue regarding boundaries that are mutually beneficial to both entities. She felt that we represented the entire Council would meet with them and we would talk about growth boundaries and how we grow. She felt an ad hoc committee would represent something different to that group and she would not feel comfortable with that.

Councilwoman Cape felt this illustrates the need for worksessions because there are issues that come up that Council needs additional information on. She was pleased that the issue of worksessions will be discussed at the City Council's retreat.

Councilman Newman moved that Mayor Bellamy appoint an ad hoc committee to continue the dialogue about the incorporation of Leicester and related growth management issues. This motion was seconded by Councilman Mumpower and carried on a 6-1 vote, with Mayor Bellamy voting "no."

Mayor Bellamy didn't support the motion in that she felt we represented that the entire Council would meet with the organizers of the Leicester incorporation effort.

Vice-Mayor Davis suggested we use the PED Committee meeting in February as the forum of that dialogue. He reiterated that the PED Committee is a public meeting and encouraged any member of Council who is interested in the matter to attend the meeting.

Councilman Mumpower noted that timing is an issue and suggested the PED Committee convene a special meeting. It was the consensus of the majority of Council for the PED Committee to convene a special meeting to discuss this matter.

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 10:40 p.m.

Keisha Lipe
CITY CLERK

Jerry M Bellamy
MAYOR

Tuesday – January 15, 2008 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; Councilman William A. Russell Jr.; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Keisha Lipe

Absent: None

PLEDGE OF ALLEGIANCE

Mr. Cameron Barnett, from Boy Scout Troop 77, led City Council in the Pledge of Allegiance.

INVOCATION

Father Jim Abbott from St. Matthias Episcopal Church gave the invocation.

I. PROCLAMATIONS:

II. CONSENT AGENDA:

A. **APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JANUARY 8, 2008**

B. **RESOLUTION NO. 08-08 - RESOLUTION APPROVING A CO-SPONSORED EVENT FOR JANUARY, 2008**

Summary: The consideration of a resolution approving a co-sponsored event for January, 2008.

Due to the early date of the Martin Luther King, Jr. Peace March, City Council's review of a partial list is required prior to consideration of the entire list of co-sponsored special events for 2008. The Parks and Recreation Department uses a matrix to assist in determining the minimum requirements for an event to be considered for co-sponsorship. This matrix includes specific points given for such areas as economic development, out of town spending, whether the event is designed for raising funds for local charities, or whether the event increases cultural awareness and understanding. A total of 23 events were approved in 2007.

The remaining events recommended for co-sponsorship in 2008 will be submitted under a separate staff report. In the future, the Department will adjust the co-sponsorship application deadline to earlier in the year prior as an effort toward the production of a single, all inclusive staff report to City Council.

Pros:

- Generates revenue for the local economy
- Provides additional quality cultural programming and diversity
- Allows fundraising opportunities for charities
- Expands and enhances special event programming in Asheville

Cons:

- The City's financial contribution is approximately $720 in in-kind resources and fee waivers

- Events contribute to the wear and tear of infrastructure and equipment provided to the organizers

The Asheville Parks and Recreation Department recommends City Council approve a resolution for a co-sponsored event in January, 2008.

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C. RESOLUTION NO. 08-09 - RESOLUTION RATIFYING THE CITY MANAGER ENTERING INTO A CONTRACT WITH MOTOROLA INC. FOR MAINTENANCE SERVICES FOR THE CITY OF ASHEVILLE'S 800 MHZ RADIO INFRASTRUCTURE

Summary: The consideration of a resolution ratifying the City Manager entering into a contract with Motorola, Inc for maintenance services for the City of Asheville's 800 MHz radio infrastructure.

During the Fiscal Year 2008 budget process, budgetary dollars were appropriated for recurring maintenance of this equipment, with an anniversary date of December 1, 2007. Staff routed a contract through the City contract process, starting in October of 2007. Due to timing on the routing of the contract and Council's limited December agenda, it was necessary to process this contract without prior Council approval. For this reason, Council ratification of this action is being sought at this time.

Pros:
- Proactive maintenance of 800Mhz infrastructure equipment
- Repair and support if necessary due to 800Mhz infrastructure component failure
- Lower response time for support due to contractual nature of agreement, enhancing officer safety

Con:
- None noted.

Staff recommends City Council approve a resolution ratifying the City Manager entering into a contract with Motorola, Inc for maintenance services for the City of Asheville's 800 MHz radio infrastructure.

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D. RESOLUTION NO. 08-10- RESOLUTION DECLARING THE INTENT OF THE CITY TO REIMBURSE ITSELF FOR CAPITAL EXPENDITURES INCURRED IN CONNECTION WITH THE ACQUISITION OF VEHICLES AND EQUIPMENT FROM THE PROCEEDS OF LEASE-PURCHASE CONTRACT TO BE EXECUTED AND DELIVERED IN THE CALENDAR YEAR 2008

Summary: The consideration of a resolution declaring the intent of the City to reimburse itself for capital expenditures incurred in connection with the acquisition of vehicles and equipment from the proceeds of lease-purchase contract to be executed and delivered in the calendar year 2008.

The current capital improvement program (CIP) includes funds previously appropriated by City Council to finance the acquisition of fire trucks, other large vehicles and public safety radios and equipment at an approximate cost not to exceed $6.0 million. The vehicles and equipment were budgeted to be funded with proceeds from a lease-purchase financing contract.

Based on varying delivery dates, the City will receive some of the vehicles and equipment prior to the actual execution of the lease-purchase financing contract. As such, expenditures for these vehicles and equipment will initially be paid for with general fund cash. The resolution allows the City to reimburse itself for initial vehicle and equipment expenditures incurred and paid 60 days prior to the adoption of this resolution.

With approval of this resolution, the City intends to reimburse its initial vehicle expenditures from a portion of the proceeds to be received from a fully executed lease-purchase contract.

Staff recommends City Council approve a resolution declaring the intent of the City to reimburse itself for capital expenditures incurred in connection with the acquisition of vehicles and equipment from the proceeds of lease-purchase contract to be executed and delivered in the calendar year 2008.

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E. RESOLUTION NO. 08-11- RESOLUTION ACCEPTING BUCK SHOALS ROAD, WALDEN DRIVE, QUAIL HOLLOW DRIVE, CRESENT STREET, OAK STREET, PINE STREET, ORCHARD STREET, MORSE DRIVE, AND EAGLES NEST LANE AS CITY-MAINTAINED STREETS

The consideration of a resolution accepting Buck Shoals Road, Walden Drive, Quail Hollow Drive, Cresent Street, Oak Street, Pine Street, Orchard Street, Morse Drive, and Eagles Nest Lane as city-maintained streets.

This is a request for street acceptance of various existing state-maintained streets as city-maintained streets from recently annexed areas of the City of Asheville. Typically, state-maintained streets that are entirely within the city and are classified as local type streets make good candidates to become city-maintained streets. Local type streets primarily provide access to property and many of these streets are found in residential communities.

Ordinance # 7-15-1(e)(4)a requires that streets dedicated for public use by accepted by resolution of the City Council. The recently annexed areas include the Sardis Road area, the Enka Park area, the Hendersonville Road area, and the Sweeten Creek Road area.

SR 3541 (Buck Shoals Road) from SR 3522 (Old Shoals Road) to US 25 (Hendersonville Road) is a state-maintained street that has an average width of 20 feet, a length of 0.26 mile, and a right-of-way width of 50 feet.

SR 3628 (Walden Drive) from SR 3541 (Buck Shoals Road) to SR 3495 (Glenn Bridge Road) is a state-maintained street that has an average width of 20 feet, a length of 0.37 mile, and a right-of-way width of 50 feet.

SR 3316 (Quail Hollow Drive) from SR 3541 (Buck Shoals Road) to its dead-end is a state-maintained street that has an average width of 18 feet, a length of 0.10 mile, and a right-of-way width of 50 feet.

SR 3435 (Cresent Street) from NC 112 (Sand Hill Road) to SR 3436 (Pine Street)/SR 3535 (Oak Street) is a state-maintained street that has an average width of 20 feet, a length of 0.11 mile, and a right-of-way width of 50 feet.

SR 3535 (Oak Street) from SR 3435 (Cresent Street) to SR 3534 (Orchard Street)/SR 3436 (Pine Street) is a state-maintained street that has an average width of 20 feet, a length of 0.13 mile, and a right-of-way width of 50 feet.

SR 3436 (Pine Street) from SR 3435 (Cresent Street) to SR 3534 (Orchard Street)/SR 3535 (Oak Street) is a state-maintained street that has an average width of 20 feet, a length of 0.15 mile, and a right-of-way width of 50 feet.

SR 3534 (Orchard Street) from NC 112 (Sand Hill Road) to SR 3436 (Pine Street)/SR 3535 (Oak Street) is a state-maintained street that has an average width of 20 feet, a length of 0.25 mile, and a right-of-way width of 50 feet.

SR 3555 (Morse Drive) from SR 1224 (West Oak View Road to its dead-end is a state-maintained street that has an average width of 18 feet, a length of 0.50 mile, and a right-of-way width of 60 feet.

SR 3643 (Eagles Nest Lane) from SR 1224 (West Oak View Road) to its dead-end is a state-maintained street that has an average width of 24 feet, a length of 0.23 mile, and a right-of-way width of 50 feet.

Transportation and Engineering Department staff and Public Works Department staff have inspected these streets and recommend their change of ownership from state-maintained streets to city-maintained streets.

Following City Council's approval of this resolution and approval by the North Carolina Department of Transportation (NCDOT), the subject streets will be added to the official Powell Bill List.

Pros:

- The City of Asheville will receive Powell Bill Funds from the NCDOT to maintain the streets.
- The streets provide access and connectivity in residential communities.

Con:

- Powell Bill Funds will probably not cover 100% of the total cost to maintain the streets.

Staff recommends that City Council approve a resolution accepting Buck Shoals Road, Walden Drive, Quail Hollow Drive, Cresent Street, Oak Street, Pine Street, Orchard Street, Morse Drive, and Eagles Nest Lane as city-maintained streets.

When Mayor Bellamy asked if we could do something similar for water lines that are constructed by developers, City Manager Jackson said that he would investigate that and report back to Council.

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Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Vice-Mayor Davis moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Jones and carried unanimously.

III. PRESENTATIONS & REPORTS:

A. CITIZEN POLICE OVERSIGHT REPORT

Police Chief Bill Hogan said that during the past several City Council Public Safety Committee meetings, there has been discussion concerning the interest of some residents to have a Citizens Police Review Board with oversight of the Asheville Police Department (APD). He has been asked to provide you with information on the current process for Internal Affairs and

others avenues that are in place to ensure the accountability of Asheville Police Department employees.

Internal Investigations: It is the APD's policy to investigate all reports of employee misconduct, including anonymous complaints. The Office of Professional Standards is responsible for coordinating such investigations. Complaints can be made to the on-duty supervisor 24 hours a day to the Office of Professional Standards during weekday business hours, or via the City's website, where a complaint form is downloadable.

Most complaints investigations will be completed within 30 days, but in some cases it may require more time to locate witnesses or to collect information. If an investigation will take longer than 30 days, the complainant will be notified of the expected date of completion.

When a complaint is received, the Office of Professional Standards sends a letter to confirm the complaint has been received and assigned for investigation. Citizens who file a complaint will receive a follow-up letter at the completion of the investigation.

However, in accordance with state law, the APD cannot release what specific discipline, if any, was imposed on the employee.

Police Shootings: Officers in North Carolina are allowed to use deadly force when they feel their lives or the lives of others are in danger. In the case of any officer involved shooting, we immediately request that the State Bureau of Investigation (SBI) conduct an independent investigation of the incident and then presents its final report to the district attorney, who decides whether or not to file criminal charges. The SBI investigation can take up to six months.

Claims of Violations of Constitutional Rights: When a private citizen believes his or her constitutional rights have been violated by a police officer, the citizen has the following resources:

Municipal

1. File a complaint with the APD's Professional Standards Division (Internal Affairs).
2. File a civil claim for money damages with the City's Risk Management Division.

State

1. File complaint with the N.C. Attorney General.
2. Contact a civil attorney and file a lawsuit in state court.

Federal

1. File a complaint with the federal government (http://www.usccr.gov/filing/findx.htm) U.S. Department of Justice or the local office of the Federal Bureau of Investigation (FBI)
2. Contact a civil attorney and file a 42 U.S. 1983 lawsuit in federal court.

State Law Concerning the Release of Personnel Information: One of the frustrations that he hears from citizens is they want public access to all the information contained in a disciplinary case. State law clearly prohibits the City from releasing this information.

Pursuant to N.C. Gen. Stat. § 160A-168, personnel records are not considered public record.

It is a class three misdemeanor for any public official who willfully permits any person to have access to a personnel file except as permitted by the statute.

Therefore, it is a class three misdemeanor for any employee of the City of Asheville to release the contents of any internal affairs investigation of a police officer. The only way a person

can gain access to an Internal Affairs investigation is to get a court order issued by a Superior Court Judge.

In addition, any information regarding the criminal investigation of a city employee (whether performed by APD or the SBI), is considered a criminal investigative record. Pursuant to N.C. Gen. Stat. § 132-1.4, criminal investigative records are not public records and shall not be released to the general public without a court order from a Superior Court Judge.

Pursuant to N.C. Gen. Stat. § 160A-168(b), the following information is considered public information and will be released upon a written request to the City's Human Resources Department:

1. Name;
2. Age;
3. Date of original employment or appointment to the service;
4. The terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the city has the written contract or a record of the oral contract in its possession;
5. Current position title;
6. Current salary;
7. Date and amount of the most recent increase or decrease in salary;
8. Date of the most recent promotion, demotion, transfer, suspension, separation, or other change in position classification; and the office to which the employee is currently assigned.

State Law Establishing the City of Asheville Civil Service: Another factor that complicates disciplinary matters is the fact that the City of Asheville is one of a handful of cities in North Carolina that has a state statute that establishes a Civil Service Commission to provide extra protection for employees to prevent arbitrary acts of discipline. The Asheville Civil Service Act (1999-303) creates the Asheville Civil Service Commission which has five members (2 appointed by the City Council, 2 member elected by the employees of the city and one member appointed by the other four).

The Civil Service Board hears appeals by employees regarding specific disciplinary actions issued by the City. These hearings are closed to the general public based on the disclosure of personnel information as set forth in N.C.G.S. §160A-168. These hearings are closed unless the employee consents to the hearing being open to the public.

Municipalities with Citizen Review Boards: Some North Carolina municipalities have a citizen review process of police discipline. Those cities are Charlotte, Winston-Salem, Durham and Greensboro. Review boards in these cities make non-binding recommendations to the city manager, who makes the final decision regarding the application of any discipline.

In each of these cities, the General Assembly passed a local law allowing for the disclosure of disposition of the complaint and facts relieved upon to the committee and to the aggrieved party or his or her survivor. *However, board members are required to treat this information as confidential and are prohibited from releasing it to the general public.* Therefore, even if there were a citizen review board of the Asheville Police Department, meetings regarding officer conduct would not be public and the board members would be prohibited from releasing personnel information (except as permitted by statute) to the general public.

Other statutes: Pursuant to N.C. Gen. Stat. § 147-90 – The district attorney, upon the request of a surviving spouse or next of kin, may within 180 days of the death request the SBI to conduct and investigation into the incident. *The document is not a public record pursuant to 132-1.*

Recommendation: Past national research has reported that the level of citizen satisfaction with an Internal Review process or a Citizen Review process is determined by the outcome of the case. If the case finds in favor of the complainant, then there is satisfaction with the case; conversely, if the complaint is not substantiated by an internal investigation or a citizen review panel, then the complainant is not satisfied with the outcome.

It is much like a court proceeding: if the suspect is not found guilty then the victim and the victim's family generally are not happy with the outcome. This speaks to the challenge we face in our efforts to preserve justice and to ensure fairness for all concerned parties.

It was the recommendation of the City Council Public Safety Committee to recognize the existing, multiple avenues available to citizens to address incidents of police misconduct and to ensure accountability. This Committee did not recommend a Citizens Police Review Board at this time. Additionally, the Public Safety Committee stated that the City Council, as the elected officials directly accountable to the citizens of Asheville, works closely with the City Manager to ensure that City services are delivered professionally and fairly in an efficient and effective manner.

Councilman Mumpower said that it was the Public Safety Committee's feeling that it was not in the best interest of the City or our police officers to do anything that would further politicize the activities of the Police Department as seen from research of experiences in other cities that have committees of this nature. The Committee felt it was redundant to the extent that no committee that we establish can freely release personnel information which is a weak link in the system. But, that is state law not local law and it's one of the things that leaves the community with the impression that the Police Department is covering things up. We can, however, do a better job of communicating with people that that's the reality. There was also a suggestion that we look for ways to strengthen the existing Citizens/Police Advisory Committee, which is struggling for a role, i.e., educating the community, raising awareness, addressing concerns, etc. The Public Safety Committee also wondered if it would be possible to strengthen two things in the Police Department (1) communication; and (2) the complaint procedure to make it more user-friendly.

Vice-Mayor Davis said that the Public Safety Committee is concerned about the public perception and about the amount of violence that goes on in our community. The Police Department is very proactive in enlisting help from the SBI and FBI, if necessary. We have quite a bit of accountability. We want the community to realize that this is a process that is taken seriously. We will be initiating an electronic program on our website that will let people know where crime occurs and that kind of openness goes beyond what we see in a lot of other communities. We do want to give the Citizens/Police Advisory Committee a different scope - not an oversight committee, but a committee that interfaces with the Police Department and the public.

In response to Councilwoman Cape, Police Chief Hogan explained the complaint procedure, noting that the person can access the information off the City's website and does not have to physically come into the Police Department. He also noted that even though we do not allow advocacy groups to take the complaint (the aggrieved person must file the complaint with the Police Department, but the advocacy group can assist the person), the Department has no objectives to working with the advocacy group.

In response to Councilman Newman, Vice-Mayor Davis said that the City Council Boards/Commissions Committee has asked City Clerk Lipe to provide them with a copy of the ordinance establishing the Citizens/Police Advisory Committee so they can see the scope of work that was envisioned. It is their hope to broaden the scope of the Committee, not that it become an oversight committee.

Councilman Mumpower used the Civic Center Commission as an example of the type of work that could be performed by the Committee. He envisioned the Committee reviewing certain policy matters to reflect community insight, for example the Committee could be directed to work with the Police Chief and community to come up with a user-friendly complaint procedure. Even though it is an advisory committee, it can serve a real function.

When Councilman Newman questioned if there was any research on whether the presence or absence of a police oversight committee tends to have any influence on the public perception of law enforcement in the community, Police Chief Hogan said he would have to research that particular issue.

In response to Councilman Newman, Police Chief Hogan said that he believed the way the committees work in other cities is that after the police department meets with the complainant (or family member) and shares with them the basic information and results of the internal investigation, if they are not satisfied, they have the right to appeal to the Citizens Police Review Board.

Councilwoman Jones suggested Chief Hogan not only research on whether a Citizens Police Review Board does improve the overall trust in the perception of law enforcement in the community but balancing that with whether it impacts the police feeling they have citizen appreciation or it results in reduced police moral.

Mayor Bellamy suggested the Citizens/Police Advisory Committee could give feedback on crime statistics, looking at where crimes are taking place in our City and how neighborhood residents can work with the Police. The Committee could work to improve the community policing efforts. The City also has a Citizens Police Academy which gives the citizens the opportunity to get inside the Police Department to see the internal operations. The Committee could be utilized to take advantage of that process by letting the community know of what the Citizens Police Academy can offer. She suggested the Committee could be directed to track complaints, i.e., the number of complaints and the type of complaints. Another suggestion would be for the Committee to work with the Police Chief to research what kind of classes might be beneficial for our officers. The Committee needs to become ambassadors between the Police Department and the community. That way the Committee is being utilized as well as the community being kept informed.

Police Chief Hogan noted that the next Police Academy begins March 13, 2008, and urged citizens to apply so they can see the heart of the Police Department and the police officers level of commitment.

Mr. Reid Todd questioned how minor complaints are reviewed.

Mr. Fred English felt that a Citizens Police Review Board was not necessary in that the Police Department. That job rests with the Police Chief, City Manager and City Council.

Councilman Mumpower moved (1) that further efforts be made by the Police Department to strengthen the citizen complaint procedure and process and that collaboration be conducted in with the Public Safety Committee; (2) to ask the Public Safety Committee to make efforts with the Police Department to seeks ways to evaluate and strengthen the utility of the Citizens/Police Advisory Committee (using suggestions outlined by Mayor Bellamy above); (3) there be additional efforts to strengthen police community from the City and the police on high visibility police matters within the limits of North Carolina law and that would include continuing education explanation of what the limits the Police Department operates under; (4) that the Public Safety Committee make an active effort to meet with those organized groups who have an interest in establishing a Citizen Police Review Board and seek more input about what their concerns are to see how we might work with them to that effect. This motion was seconded by Vice-Mayor Davis.

Vice-Mayor Davis suggested we publish information on the City's website under the Police Department the meeting dates and times of the Public Safety Committee. Even though it is not the recommendation at this time to establish a Citizens Police Review Board, community input is important.

Councilman Newman felt that we are closing the door on the creation of a Citizens Police Review Board. He's not sure if that's in the community's or the Police Department's best interest or not. He would like to hear the pros and cons on both sides of the issue. He was in favor of broadening the scope of work of the Citizens/Police Advisory Committee, but was not comfortable in closing the door.

Councilwoman Cape didn't think that the people who support a Citizens Police Review Board were notified that this item was going to be discussed by Council at this meeting. Even though the Public Safety Committee is not recommending a Citizens Police Review Board, at this time, she would be interested in further discussion with the community on why they feel the Board is necessary. All points on the motion are good; however, she did not want to close the door entirely on a Citizens Police Review Board.

Upon inquiry of Councilman Newman, Vice-Mayor Davis said this issue was discussed in depth at the Public Safety Committee. Out of that Committee, there was a unanimous feeling that this was closure. However, nothing is closed forever. He felt we have left the door open to re-establish the Citizens/Police Advisory Committee and to look for ways to strengthen public comment. We would be open, as a Committee, to have public comment on this subject. This question has been out there for a long time and the position of the Public Safety Committee and the Police Department is that a Citizens Police Review Board not be established.

Mayor Bellamy said it's clear that regardless of what information Council needs, regardless of a Citizens Police Review Board or a Citizens/Police Advisory Committee, the state statutes prohibit personnel information or actions of any Police Department employee be given out, unless the City is given special procedures to make that happen. Even if the Public Safety Committee meets with the individuals who are requesting the Citizen Police Review Board, we don't have the authority to give out personnel information. It would be good to hear the concerns (other than personnel) from those requesting the Board because we may be able to incorporate solutions into the existing structure. She said that anything on City Council's agenda can be revisited, unless it is a conditional use permit, so if a Council Member has other information that they would like Council to review, it can be brought back. At this time we want to re-tool the Citizens/Police Advisory Committee to have true responsibilities that will impact the community in a positive way and assist the Police Department. We are also asking the Police Chief to put more efforts into communication by providing additional information to the community.

Ms. Adrian Peterson hoped that the Citizen Police Review Board will be revisited.

Councilman Mumpower asked for a friendly amendment to his motion. The amendment would be to add "(5) the Citizens/Police Advisory Committee come back to City Council sometime in a 6-month parameter and give Council a report on their follow-up actions or any additional recommendations that they have". This friendly amendment was accepted by Vice-Mayor Davis.

The amended motion made by Councilman Mumpower and seconded by Vice-Mayor Davis carried on a 5-2 vote, with Councilwoman Cape and Councilman Newman voting "no."

B. UPDATE/EVALUATION OF ASHEVILLE DESIGN CENTER'S PROPOSED ALIGNMENT TO I-26

Ms. Cathy Ball, Director of Transportation and Engineering, said that the purpose of this report is to update City Council on the status of the evaluation of the Asheville Design Center's (ADC) proposed alignment for the I-26 Connector.

In October 2007, Council authorized staff to contract with Figg Bridge Consultants (Figg) to evaluate the ADC's proposed alignment for the I-26 connector. The City of Asheville and Buncombe County partnered to pay for these Figg Bridge partnered with Lochner to complete this work by January 18, 2008, as requested by the N.C. Dept. of Transportation (NCDOT).

A Technical Review Committee (TRC) consisting of two City representatives, two County representatives and two representatives from the Asheville Design Center provided oversight to the process.

The evaluation process included the following:

- reviewing the ADC's proposal;
- meeting with NCDOT to evaluate their concerns about the ADC's proposal;
- developing alternative designs to address NCDOT concerns;
- meeting again with NCDOT to review revised design proposal;
- making adjustments with revised design;
- meeting with NCDOT and TRC to propose the final recommended design; and,
- preparing final report to NCDOT for January 18, 2008 deadline.

Figg and Lochner have revised the ADC's design to meet the design guidelines required by NCDOT and FHWA. The revised design appears to accomplish the goals of the original ADC's design. The only goal that was not able to be met was a double-decker design for the new bridge.

At the January 4, 2008, meeting, Figg presented the design to NCDOT and the TRC. NCDOT representatives could not see any major problems with the design but stated that they would need to review more detailed design drawings before stating that the design is feasible and should be added to the Environmental Impact Statement for the I-26 Connector. NCDOT representatives wanted specifically for the constructability and capacity issues to be addressed in the final report. NCDOT indicated that it would take them two months to review the report once it is received on January 18, 2008.

Figg will provide a report to NCDOT on January 18, 2008. They then made the following presentation to City Council:

Mr. Manuel Carballo, Director of Texas Officer of Figg Engineers, explained the Project stakeholders are: National Highway System - FHWA; State of North Carolina - NCDOT; Local Communities - City of Asheville, Buncombe County, and Asheville Design Center (ADC).

Communication is the key through (A) clearly understanding stakeholders objectives and concerns; and (B) continuous and successful feedback of review through (1) kick-off meeting in Asheville; (2) teleconferences and electronic data sharing with alignment adjustment plans in progress; and (3) multiple interactive team progress meetings.

Key objectives for the NCDOT are (A) safe and functional system; (B) meet local and federal design standards; (C) consider environmental impact; and (D) meet operational requirements.

Key objectives for Asheville are (A) context sensitive design - minimize footprint; (B) separation of local and interstate traffic - separate existing I-240 and I-26 traffic from local traffic on Patton Avenue; and (C) aesthetics - opportunity for new "signature" bridge over the French Broad River and overall project visual quality.

Using a map, they explained the ADC's Alternate 4B as follows: (A) horizontal adjustment - French Broad River crossing (1) meet roadway design standards; (2) minimize footprint; and (3) signature bridge possibility (a) increased I-26 radii to minimum allowed by AASHTO; and (b) increased I-240 ramp radii to minimum allowed by AASHTO; (B) merging I-26 with US 19-23 while minimizing footprint with limited horizontal clearance and close proximity to historic property (1) extended I-26 bridge through constricted area and (2) I-26 near Montford Historic District viaduct concept; and (C) separate local and interstate traffic (1) Patton Avenue and I-26 interchange; and (2) Patton Avenue with Hill Street/I-240/US 19-23 (a) added connection to Regent Park and Holiday Inn Drive; and (b) service road added to provide connection to Hill Street.

They then reviewed the ADC adjusted alignment relative to the NCDOT Alternative 4.

The remaining schedule includes (A) final report - January 18, 2008; and (B) NCDOT review.

Mayor Bellamy said that the NCDOT has asked for two months to review the report and at that time we will receive their report.

Councilman Russell felt that the ADC adjusted alignment is a good example of a smaller footprint and hoped that the NCDOT would review it carefully. He felt the ADC alignment is a good gain for our community.

Councilman Mumpower expressed concern of the cost of the viaduct vs. the NCDOT's recommendation. Mr. Carballo responded that said that in coordination with the NCDOT they agreed that we would submit all the technical drawings by January 18. That would give them a head start on reviewing the concept, while they develop the cost estimates. While the NCDOT will be reviewing the technical drawings with their cost estimate, they hope to save time in review. He explained why it was their opinion that a lot of the cost for the viaduct will be offset by using the existing right-of-way. The increase in cost for the construction of that type of structure over US 19-23 will go up; however, the rest of the project will not be penalized.

Councilwoman Jones confirmed with Mr. Carballo that to move forward with the ADC alternative alignment will not delay the construction date. She was pleased with the different players all working together on the same team.

Councilman Newman spoke in support of the ADC alternative alignment and moved to (1) express Council's appreciation to the NCDOT for it's cooperation with the City of Asheville, Buncombe County, Figg, Lochner and the ADC to consider the viability of the ADC's Alternative 4B alignment for the I-26 connector project as Alternative 4B has many advantages for the community and region; and (2) as the Asheville City Council believes there is strong community support for this design, we urge the NCDOT to support consideration of Alternative 4B and to move forward with expeditious completion of the project. This motion was seconded by Councilwoman Cape.

Mayor Bellamy said that the Governor has appointed her to the 21st Century Transportation Committee to look at transportation throughout North Carolina. At the December, the Committee talked about the connector and this was the first time the City of Asheville was discussed. It's important that the community realize that the first phase the NCDOT recognizes is "malfunction junction" (I-26, I-240 and I-40 interchange). The report was that there was $239,000 Million set aside for that to happen. But all of the projects have been delayed two years because of funding. That was the report the Committee received. She does not want this process to be blamed for the delay. She reiterated that the NCDOT told the Committee that all of the portions of the loop projects across the state are delayed by two years because of funding. She urged the community to rally around fixing "malfunction junction" first with no delays. She noted that the City of Asheville was one of the original loop projects for the NCDOT, but the last to get started.

What we have tonight is about the same thing that Council passed in 2000. In 2000 Council said there were some objectives we wanted to achieve, i.e., sensitive to the design, separate traffic, and have something nice in our City. Tonight she hoped Council would reaffirm those objectives.

Mr. Alan McGuinn, Chairman of the ADC, thanked Council for having the vision to initiate this process. The ADC endorses this plan, however, there are still some things that need to be worked out but it basically fits all of their requirements. He noted that the NCDOT has been cooperative throughout this process. The ADC is still committed in helping in any way they can.

Mr. Reid Todd felt this design does not separate enough the trucks carrying nuclear waste products through our community.

Councilwoman Cape asked for a friendly amendment to encourage the NCDOT to prioritize the interchange of I-26/I-240 and I-40 interchange. Councilman Newman accepted the friendly amendment.

At 6:38 p.m., Vice-Mayor Davis announced a very short break.

Mayor Bellamy read into the record the following, which is a portion of the minutes from the 21st Century Transportation Committee meeting held in December, 2007 (Mr. Calvin Leggett s the Manager Program Development Branch of the NCDOT): "Mayor Bellamy tanked Mr. Leggett for what had been done for Asheville. She said looking at the reality that Asheville will see a 2 year delay because of the funding and later on you said funding to address I-26, I-240, and I-40 interchange will be addressed, she wanted to make sure those 2 statements are not in conflict. She asks if they will see that happen first because that is something they have been talking about as a community since the early 90's. Mr. Leggett answered, yes, and if you go to the chart that shows what is being proposed to fund in the draft program versus what was in the program the Board adopted last summer, what you will see is the one city that actually showed a significant increase in funding is Asheville. There has been a tremendous increase in the anticipated cost in price there but in order to keep the delay in Asheville to only 2 years most of the additional revenue went to Asheville. It was trying to not have one area delayed much more than any other." She reiterated that the delay is not caused by what Council is doing, but because of funding. We do have funding for the first phase which is I-26, I-240 and I-40 interchange.

Councilman Mumpower felt there was a missing sense of urgency in our discussion about completing the I-26 corridor. He does not believe that Council's on-going discussions have not delayed the project. He believes our deliberations have created hurdles and complexities. He also expressed concern about plans to move viaducts; and that we are investing our energies in things that are not realistic to our costs. He felt this was a nice effort and well intended, but the sense of urgency is missing.

The amended motion made by Councilman Newman and seconded by Councilwoman Cape carried on a 6-1 vote, with Councilman Mumpower voting "no."

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE MASTER PLAN AND REZONING FOR THE PROJECT IDENTIFIED AS HORIZONS, LOCATED AT 136, 176 AND 180 MERRIMON AVENUE AND 17 AND 23 ELOISE STREET FROM HIGHWAY BUSINESS DISTRICT, COMMUNITY BUSINESS I DISTRICT AND RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO URBAN VILLAGE DISTRICT FOR A MIXED USE DEVELOPMENT

Urban Planner Julia Cogburn said that the applicant has requested this matter be continued to July 15, 2008, for several reasons. However, the main reason is their interest in

continuing to work with the neighborhood, especially since a valid protest petition was submitted (which will remain in effect until July 15, unless it is withdrawn).

Councilman Mumpower moved to continue this public hearing to July 15, 2008. This motion was seconded by Councilman Davis and carried on a 6-1 vote, with Councilwoman Cape voting "no."

B. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR GOVERNOR'S VIEW COTTAGES, LOCATED AT 190 AND 180 GOVERNOR'S VIEW ROAD

ORDINANCE NO. 3573- ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR GOVERNOR'S VIEW COTTAGES, LOCATED AT 190 AND 180 GOVERNOR'S VIEW ROAD

City Clerk Lipe administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 6:53 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Jessica Bernstein submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Bernstein said that this is the consideration of the issuance of a conditional use permit for property for Governor's View Cottages, located at 190 and 180 Governor's View Road for the development of 14 single family residences.

This request is to review conceptual site plans for a conditional use permit (with 1-unit density bonus and altered site standards) due to exceptional development standards pursuant to Section 7-16-2(b)(17) of the Unified Development Ordinance (UDO) to construct a 14-lot single-family residential development.

The project site consists of two parcels located at 180 and 190 Governor's View Road south of Tunnel Road with a combined area of 2.15 acres (according to site plans). The parcels and immediate area are zoned RM-6 but other nearby zoning districts include RS-4, RM-8 and HB (City Exhibit 4 - Location Map and City Exhibit 5 - Aerial Map). The applicant is requesting to create 14-lots (reduced-size) with three varieties of single-family residences on the site. Access to the project is proposed via a new one-way loop road (public) off of Governor's View Road (City Exhibit 6 - Site Plan).

One of two existing structures will be removed and the other, a vernacular wood dwelling, will be retained and incorporated as the dwelling structure for lot 14. The 13 new structures are proposed as a mix of three styles, all two-stories tall. They will be certified healthy built homes.

Sufficient off-street parking for the proposal (28 spaces) has been included as well as sidewalks around one side of the new loop road and along Governor's View Road.

Building Data: 14 Single-family residential units
Type A – (6 units) 2-story with attached garage, 3 bedrooms, 1333 SF
Type B – (3 units) 2-story with walk-out basement, 2 bedrooms, 1980 SF
Type C – (4 units) 2-story with attached garage, 2 bedrooms, 1404 SF
Existing Structure – (1 unit) 2-story with detached garage, 2 bedrooms, 1200 SF

Landscaping is proposed according to the current ordinance, and includes street trees, tree save area and building impact landscaping (City Exhibit 7 - Landscape Plan). Significant vegetation is being retained onsite and a portion will be used as credits. The remaining available credits are not being applied to required landscaping, but rather will simply bolster the natural features of the site. The applicant is seeking to reduce the required tree save area from 0.65 acres to 0.57 acres, as the reduction will assist in maximizing the efficiency of solar panels incorporated throughout the project (must be approved by City Council). Open space is required and the applicant is proposing to incorporate 10,472 s.f. of the 18,730 s.f. required with a *fee-in-lieu* for the remaining 8,258 s.f.

Stormwater will be handled through a bio-retention area in the central open space to treat and detain surface runoff from the street and sidewalks. Also, pavement widths have been reduced to the minimum in order to encourage runoff to infiltrate into this natural area. Flushed curbs around the central open space area also assist in drainage. This project further seeks to reduce impervious surfaces by incorporating green roofs on garages wherever possible.

Incorporation of exceptional development practices allows for a project to seek alteration on standards for density, height, number of residential units per building, setbacks, lot size and lot with. For this project, the developer is providing higher quality building design and orientation sensitive to surrounding neighborhood context, significant use of green building techniques, enhanced stormwater management and significant vegetation preservation. They are seeking a one-lot density bonus and alterations to reduce the minimum lot size, to eliminate the required side setbacks between lots 7 & 8 to incorporate a shared garage, and to reduce the 70' lot width requirement (City Exhibit 8 - Colored Site Plan).

At the November 5, 2007, Technical Review Committee (TRC) meeting, this project was approved with the conditions outlined in their staff report. Neighbors present voiced concern over the impact of increased traffic along Governor's View Road as a result of the 12-additional houses. Discussion followed on what benefits traffic calming could provide, issues with retaining Hemlocks that may or may not be diseased, and safety concerns related to a retaining wall on a neighboring property.

At the December 5, 2007, Planning & Zoning Commission (P&Z), this project was approved unanimously (5-0, 5 members present). One neighbor expressed concerns about a retaining wall running on the properties adjacent to the north and northwest of the project site and possible safety issues resulting from having houses close to this grade change. The developer expressed that he is willing to work with the neighbors on installing either a privacy fence or increased vegetation along that corner. P&Z added a condition to their approval that an agreement on this issue would be worked out prior to the City Council hearing (City Exhibit 9 - Site Plan showing proposed fence alignment).

City Council must take formal action as set forth in section 7-5-5(e)(3) of the UDO, and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case pursuant to section 7-16-2(c) of the UDO. Staff's review indicates that all seven standards are met as proposed in the site plan.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the *UDO*, the *Standards and Specifications Manual*, the *North Carolina Building Code* and other applicable laws and standards that protect the public health and safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
   The proposed use and development of the land incorporates and preserves several areas of existing mature vegetation. Otherwise, no significant natural or topographic features exist on the site which would make this condition an issue.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
   The development is not expected to injure the value of adjoining or abutting properties, especially given the commitment to preserve mature vegetation along Governor's View Road, in the center and along the western edge of the property as well as the high-quality of building design and materials and green site design practices.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
   This area is zoned RM-6 which is intended for either single-family or multi-family development. The proposal for these modestly-sized 14 single-family homes is in harmony with the scale, bulk, coverage and character of the area. This request includes a density bonus for one additional lot beyond what the site would allow, by incorporating Exceptional Development Standards. Staff does not believe that the one additional lot creates an incompatible situation as it relates to surrounding density.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
   The *Asheville City Development Plan 2025* proposes a Smart Growth development pattern by encouraging compatible higher density residential infill projects (pg. 31). One way to accomplish this goal is to apply existing zoning tools to incentivize higher density residential infill development. This project accomodates utilizes the "Exceptional Development Standards" density bonus. The applicant has also incorporated green building concepts into the design to reduce the environmental impacts of building construction, i.e. smaller houses, energy efficient construction, renewable energy practices, quality materials, reduced impervious surfaces and less stormwater impact and tree conservation (pp. 72-75).

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
   This proposed development is located near major road facilities, interstate connections and within one mile to a City bus route (#13). In addition, basic infrastructure appears adequate and preliminary review by other service providers has not revealed any problems for future service to the development.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**

Although increased traffic has been raised as a concern by neighbors, the City Traffic Engineer has noted that 100 vehicles per hour would be the trigger for requirement of a Traffic Impact Study. At an estimated 20 vehicle trips per hour, a development of this size is not expected to cause undue traffic congestion or create a traffic hazard.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:
- Project incorporates green building techniques and environmentally sensitive approach to development.
- High density infill development and stormwater best management practices further the goals and objectives of the comprehensive plan.

Cons:
- The project exceeds the density allowance and does not comply with lot widths, lot sizes or side setback (lots 7 & 8) under the RM-6 zoning district unless the Conditional Use Permit and density bonus is approved.

Based on the above findings and that the project appears to comply as Exceptional Development, staff recommends approval of the conditional use permit and approval of the 1-unit density bonus and development standard modifications including the reduced tree save area based on exceptional development as requested by the applicant.

Mr. Tony Hauser, representing Ambient Design Group, spoke in support of the conditional use permit, while showing Council several architectural design and elevations of the different units (Applicant Exhibit 1).

After rebuttal, Mayor Bellamy closed the public hearing at 7:00 p.m.

Councilwoman Cape moved for the adoption of Ordinance No. 3573, to approve the Conditional Use Permit, adopting the proposed master plan for Governor's View Cottages with the requested modifications to lot size, lot width and side setback for lots 7 & 8; approving the 1-unit density bonus; and reduction of the required tree save area from 0.65 acres to 0.57 acres, subject to the conditions recommended by City staff and the Planning & Zoning Commission, (finding that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation), subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; (5) This project will undergo final review by the TRC prior to issuance of any required permits; (6) The developer and neighbors on the north and northwest sides of the property will agree on a privacy fence/security screening feature to run along the retaining wall that is on the neighboring parcels; and (7) To ensure that the reduction in green space requirements is formalized by the green roofs; and (8) That the materials and designs shown to Council are a conditional for approval. This motion was seconded by Councilman Mumpower and carried unanimously.

ORDINANCE BOOK NO. 24 - PAGE 305

At 7:01 p.m., Mayor Bellamy announced a short recess.

C. PUBLIC HEARING TO CONSIDER THE REZONING PROPERTIES LOCATED ON OR NEAR MERRIMON AVENUE FROM COMMUNITY BUSINESS I DISTRICT, COMMUNITY BUSINESS II DISTRICT, COMMUNITY BUSINESS I DISTRICT/CONDITIONAL ZONING, COMMUNITY BUSINESS II DISTRICT/CONDITIONAL ZONING, NEIGHBORHOOD CORRIDOR DISTRICT/CONDITIONAL ZONING AND HIGHWAY BUSINESS DISTRICT/CONDITIONAL ZONING TO MIXED USE DISTRICT

Mayor Bellamy said that this public hearing and the following two public hearings (1) to consider an amendment to the Unified Development Ordinance (UDO) to create a mixed use development district; and (2) to consider an amendment to the UDO to provide for development standards for parking garages are related. The public hearings were held on August 14, 2007, and postponed from September 18, 2007, until this date. All would need to be voted on separately.

Interim Planning & Development Director Shannon Tuch said it's been over two years that City staff and representatives of the Merrimon Avenue area have worked together to explore some alternative development standards for the corridor. This is largely been in response to some notable development projects that have been developed during the same time period. In the fall of last year, City Council had the opportunity to review some of the report information that had been developed, along with some proposed recommendations which included the creation of a new Mixed Use District (MXD) as well as a large scale rezoning that would go with it. Consideration of these recommendations was delayed primarily over concern expressed by some of the business owners along the corridor. This concern led staff to request a continuance in order to conduct a second community meeting, but also to perform some additional research and to explore some other options that hopefully would address some of the original concerns. The information gained from the meeting did help our staff focus and we are now recommending that we go in a different direction, which is outlined in the following staff report. Should Council support this direction, we would recommend that the three public hearing items that are related, as read by Mayor Bellamy, actually be withdrawn and that Council direct staff to develop more specific standards that support the recommendations in the report to be reconsidered. We are asking for some conceptual support and some direction from Council over the recommendations outlined in the following staff report.

Ms. Tuch said that because these recommendations are substantially different than what had been considered previously by the Planning & Zoning Commission (Commission), staff would actually recommend that this be remanded back to the Commission, or rather a new initiative that would begin again anew with the Commission for this consideration. This would also allow some additional opportunity for community input and some additional involvement in crafting of the specific standards.

Ms. Tuch then summarized by saying they are recommending that we amend the existing sidewalk standards to allow for a slightly larger sidewalk and to maintain the existing planting strip requirement. This would result in a sidewalk planting strip cross section that is one foot larger than what would be required today. The former recommendation had actually proposed a reduction in the planting strip requirements. If we get the opportunity to put trees in that green strip we really want a minimum of seven feet. The large majority of Merrimon Avenue will be - just a green area, a utility strip, and we want a minimum of five feet because that is the easiest to maintain in order for us to access water lines and some of the other utility providers can access their infrastructure as well. Additionally, we would like to recommend that we provide incentives for MXD. This would be different from what was previously proposed, which was a mandated development pattern. We are suggesting we provide incentives for this kind of development. We are asking to maintain the existing standards that can be realized through the existing CB I and CB II zoning, but add some additional standards that would incentivize a new product. The easiest way to incentivize it is to allow some additional densities, some additional height and possibly some additional square footage. In our research we realized that there are no buildings

on Merrimon Avenue that exceed 19,000 square feet, even though the CB II zoning district allows a building to go up to 45,000 square feet. Our hope was that we could collapse the CB I and CB II districts together - create a new threshold at 25,000 square feet, which would render all of the buildings on Merrimon Avenue conforming to size. It would make it easier for us to incentivize by allowing a building to go up to about 45,000 square feet through multiple stories and possibly we could encourage some height incentives that could make them a little more compatible with the Highway Business District, which is the other predominant district on the corridor. We would also like to encourage that there be an on-going dialogue and eventually develop a collaborative partnership with other agencies to explore some other pedestrian enhancements on the corridor. Because Merrimon Avenue is a N.C. Dept. of Transportation (NCDOT) right-of-way, it does make it more difficult for us to make any changes to that corridor. Some improvements such as cross walks, signal enhancements, bump outs, street trees - all of those things would require NCDOT cooperation. This has been one of the stumbling blocks in the past. She hoped there is an opportunity recessitate a relationship and explore what would be needed. We don't want to close the door on that. The last recommendation is really an on-going recommendation. It really goes without saying that we really need to periodically examine the development activity that's occurring in the City and to do that in context with the existing market, the existing development practices (which change significantly over time), the City's strategic goals and our existing development standards. It's great to look at other municipalities and other areas to see how they've done it and steal some of their really good ideas and take advantage of the lessons they have learned. But we have to do that in context with the existing conditions in Asheville. We are looking at trying to create something that is more Asheville specific in nature and meets our specific needs. Just taking the time to do that little bit of extra research of the inventory of what exists on Merrimon Avenue today really helps staff understand what is there and why it's there. And, as a result we are proposing something that will be a better product for Merrimon Avenue.

The following is the staff report: "The purpose of this report is to provide a summary and analysis of community input collected on the issue of growth and development along the Merrimon Ave. corridor. Feedback was collected at a community meeting hosted by the City of Asheville Planning department on November 15, 2007. The department has also collected written comments from the public after the meeting. In addition, staff continues to reference survey information and study group recommendations that had been collected earlier in the zoning study process. Based on this information, this report includes staff recommendations for managing growth and development along the Merrimon Ave. corridor as well as areas for further analysis or consideration.

Community input revealed concerns about three areas into which the following analysis is divided: enhanced pedestrian comfort, flexibility for business/property owners, and managing growth over time.

Pedestrian Comfort

Fortunately, when it comes to pedestrian comfort there is an abundance of survey and study information that clearly documents the desirable characteristics of pedestrian friendly areas. The general categories can be further divided into any number of sub-categories but are generally summarized as:

1) Wide, unobstructed sidewalks or paths
2) Adequate lighting
3) Minimize conflict with automobiles (reduce driveways, separate pedestrian paths from vehicular ways)
4) Provide clear signalized crosswalks
5) Adequate bus stops and other street furniture

The Mixed Use District (MXD) draft attempted to enhance pedestrian comfort by requiring a slightly larger than normally required sidewalk (increased from 5-feet to 6-feet) with a required

green planting strip between the sidewalk and road. The planting strip would help to separate the pedestrian from the vehicular traffic and, in an effort to minimize impact to developers, the Merrimon Ave. Study Group proposed reducing the 5-foot planting strip normally required between the sidewalk to four feet. This would result in a 10-foot wide cross-section (4' p.s. + 6' sidewalk) which is identical to the normally required sidewalk cross section (5' p.s. + 5' sidewalk) but places a slightly higher priority on the sidewalk. Ideally, trees should be located within the green strip to help provide a stronger separation; however, this will be more challenging along Merrimon since the majority of the green strips would be located within the N.C. Dept. of Transportation (NCDOT) right of way and also have waterline and other utility infrastructure in conflict. Absent of any utility infrastructure, street trees in the right-of-way would have to receive an encroachment agreement from NCDOT. Similarly, adding signalized crosswalks on Merrimon would also have to be coordinated through and approved by the NCDOT. Lastly, a more substantial effort would have to be undertaken to remove the most common sidewalk obstruction of overhead power lines. Some preliminary due diligence has been initiated revealing that to bury these lines would require revenue in the amount of 10.8 million dollars.

Other roadway enhancements such as reduced driveways and adequate lighting help to serve not only the pedestrian but the motorist as well by promoting clear and uninterrupted traffic flow. Street lighting, again, is generally maintained by the NCDOT while the City of Asheville has site lighting requirements that are reviewed with new development proposals. A new focus group, including city staff and other interested stakeholders, has been formed and will be examining the City's lighting requirements in the coming months with the end goal of proposing revisions to those standards that better address light intrusion while maintaining or enhancing safety. Reducing driveway cuts along with increasing other street/site amenities (bus stops, benches, bike trash cans, etc.) have been best accomplished through those development proposals that are seeking to mitigate other impacts proposed through a Conditional Use Permit or Conditional Zoning. These opportunities could be enhanced through City improvement plans and through incentives offered to private developers as well.

Staff recommends the following to help address pedestrian comfort on Merrimon:

- Revise minimum sidewalk requirements to:
  - Widen the minimum width of a sidewalk from 5-feet to 6-feet
  - Maintain the minimum 5-foot planting strip - where possible, trees should be planted within the green planting strip and should meet the City's landscape requirements for planting strips (7-feet)
  - Eliminate the option for sidewalks to be located behind the curb
  - Eliminate fee-in-lieu option
- Continue to explore revenue options to bury power lines;
- Participate with site lighting focus group (recommendations to be presented separately);
- Re-initiate discussions with NCDOT regarding pedestrian enhancements on Merrimon (street trees & signalized crosswalks); and
- Create some incentives to private developers to include pedestrian-oriented site enhancements in their development proposals.

Flexibility for Business and Property Owners

Development opportunities are generally limited by two things: site specific constraints (topography, lot size, limited access, etc.) and development requirements. While there is little the City can do to alleviate site constraints, development requirements can be reviewed for new opportunities. Currently, the majority of the Merrimon corridor is zoned Community Business-I (CB-I) and Community Business-II (CB-II). The primary difference between these two districts is the size of the building allowed (12,000 s.f. versus 45,000 s.f.) and the intensity of some uses where CB-II allows drive-thru's and CB-I does not. Both districts limit height to 40-feet and generally allow for the same types of uses with otherwise identical development requirements. A general survey of the properties of Merrimon reveal that the large majority of lots are under one

acre and none of the CB properties support a building over 20K square feet – the major land use is retail (50%) with a small amount of service and other office uses (20%), and even less residential (10%) directly on the corridor.

New development opportunities could be offered along the corridor with incentives to encourage more diverse land uses. A mixed-use building product would most efficiently address the desire for retail along the corridor while providing opportunities for office and residential uses which help to address other strategic goals. A parallel set of development standards that required a more urban form (similar to the formerly proposed MXD standards) could be adopted and incorporated into the existing zoning district standards. In exchange for this more efficient product, higher thresholds for height and building mass could be offered without requiring a rezoning.

Consideration of this alternative, along with the property research, offers the opportunity to accomplish a second goal of a simpler, less complicated ordinance where the CB-I and CB-II zoning districts are collapsed into a single CB district. The average lot size found in the two districts is not significantly different (.37 acres versus .57 acres) and no CB-II property takes advantage of the 45K s.f. maximum where the largest CB-II building is only 18.5K s.f. Drive-thru's can also be accommodated by adding them as a use-by-right-subject-to-special-requirements (USSR) which would allow them by right provided they could meet certain basic standards. Consolidating these two districts allows for the opportunity of establishing a new building size maximum that would render all the existing buildings conforming but could further incentivize the mixed-use product. It would also have the added benefit of increasing the development opportunities for those properties currently zoned CB-I (which outnumber the CB-II properties 2:1) and could possibly render some non-conforming drive-thru's conforming. By limiting building sizes to 25K square feet for traditional suburban style development and 45K square feet for a mixed use product, this would allow all of the existing buildings to remain conforming while new development would be strongly incentivized to produce a mixed use product. If this were considered, then special attention should be paid to maintain opportunities for grocery retailers as well as preserving character defining structures on the corridor.

Lastly, sacrificing some flexibility may be necessary to achieve other desired outcomes. One common comment from the community meeting addressed the concern over buildings being placed so close to the street that it created either an uncomfortable or unappealing effect. Minimum setbacks should be established to address this concern. This will likely require that existing standards that allow for the reduction of front setbacks through pedestrian oriented design be removed or reduced.

Staff recommends that flexibility to business and property owners be improved by:

- Incorporating incentives for a mixed-use product into the existing CB-I and CB-II zoning districts - these standards should be allowed for uses by right, as opposed to site-specific conditioned processes that must go before Council;
- Consider simplifying development standards by consolidating the CB-I and CB-II zoning districts with special care to improve non-conformities and incentives for preserving character defining structures; and
- Establish minimum setbacks that allow for efficient use of the property while preserving comfort and form.

Managing Growth over Time

Instead of focusing on the unrealistic goal of reducing congestion on Merrimon Ave., this study has concentrated on ways to improve quality of life and promote a more sustainable development pattern given the existing conditions. It is unlikely that automobile traffic will be alleviated in the coming years so any revisions to our development standards must take into consideration the need to accommodate automobile traffic while those same growth and

development pressures are also necessitating the incorporation of other modes of transportation including mass transit, bicycles, and pedestrians. Accommodating existing traffic while providing for alternative modes ensures safe and convenient access, and by allowing development to grow vertically along the corridor ensures that development is concentrated in appropriate areas where multi-modal access can be obtained.

On the public side, new relationships and revenue sources should be explored that would allow for some much needed capital improvements; however, coordinating private development to address strategic goals should also be a priority with a particular focus on costs associated with energy, housing, transportation, construction and other realities of the current market. Keeping the existing entitlements unchanged provides some stability to the market while the creation of new parallel development standards helps to provide opportunity for additional growth and development.

Lastly, managing growth and development requires constant re-evaluation of the market and existing development practices. Periodic analysis of development projects on the corridor may prove to be revealing, particularly when benchmarked against other areas of the city (and other cities). This and other research that helps to determine housing, office, and employment needs should help shape development patterns through land use regulations (among other things). Initiatives and practices across the country should also be reviewed and considered.

In order to effectively manage growth and development along the corridor, staff recommends the following:

- Existing development standards in the CB-I and CB-II districts remain largely unchanged while new opportunities are provided through a set of alternative development standards that guide development towards a mixed-use smart growth development pattern;
- Partnerships between the City and other stakeholders be explored to design and fund road and other infrastructure improvements; and
- Periodic analysis of development activity should be conducted and reviewed in context of the existing market, strategic goals, and current development standards – findings should be documented in a report.

Summary

The proposed recommendations offer an alternative that encourages or guides development along the corridor through incentive based approach as opposed to mandated changes imposed through a rezoning. Under this proposal, existing development opportunities remain relatively unchanged with new development options introduced through an alternative set of development standards that affords greater building height and size in exchange for a multi-modal oriented mixed-use product. The incentive to encourage a more smart growth development pattern may be enhanced by consolidating the two primary zoning districts (staff would be seeking Council direction on this matter). Relatively minor changes to sidewalk requirements are also proposed based on the common interests of the both the business and residential community. Lastly, to effectively manage growth along this corridor requires cooperation from several key agencies who must be involved in an on-going discussion regarding future needs; monitoring and analysis will also be critical to identifying needs."

Mayor Bellamy would like for Council to consider the recommendations and the specific one that these items be withdrawn. At the Council retreat there will be discussion of holding worksessions and she felt this would be a prime candidate for a Council worksession to talk about what is it that we are looking for in this process. She felt it would help Council by looking at this process from beginning to end and listening to the concerns from the neighborhoods and property owners. She felt it would be appropriate to have a worksession before it goes back to the Commission, to look at what are we trying to accomplish with this corridor. She suggested Ms.

Tuch provide pictures at the worksession so Council can better understand what is being proposed.

Vice-Mayor Davis voiced concern that we might lose sight of the work that has already been done. He did, however, agree that Council does need a good working knowledge of the issue. Since this would be a worksession, we would not be entertaining public comment, but only for Council to familiarize themselves. But, if we are going to derail the process and not take into account any of the work that has gone on before and just send it back to the Commission he would not be supportive of that.

Mayor Bellamy reiterated that Council needs a good working knowledge of what is happening with the corridor. If we are looking at additional corridor studies, we need to have a successful one under our belt in order for people to buy into a process. We need to be articulate as we can.

Councilwoman Cape moved to withdraw the three public hearings read by Mayor Bellamy and direct staff to bring them back to Council at one of Council's first worksessions so that Council can review all the public work that has been done before, along with recommendations of staff so that Council can fully understand what the next step will be. This motion was seconded by Councilman Russell.

Councilman Mumpower would not be supportive of the motion. He felt that this has been a flawed process from the start. He thinks Council has misled the untold number of people who have waded through hours and hours of meetings and deliberations to try to come to a conclusion. He felt Council should tackle these items until some conclusion is reached. He felt Council may use some of their positions, but ultimately Council will trump their work.

The following individuals voiced their dismay that a lot of the information that has been worked on by the business/property owners and the neighborhoods will be lost and that Council should allow the groups to continue working on a final product:

Ms. Billie Bule
Mr. Chris Peterson
Mr. Benjamin Gilliam, President of the Five Points Neighborhood Association
Mr. Foster Shriner
Ms. Cynthia Kovach
Ms. Eileen Wilson
Ms. Leslee Kulba
Mr. Mike Lewis
Ms. Carol Ann Manheimer

There was discussion amongst Council about the purpose of the worksession and how the work to date by the groups has given Council a great foundation. The motion on the floor should not stop the groups from meeting; however, Council needs to be informed and clear as possible.

Councilwoman Cape moved for an amendment to her motion to encourage another meeting of both groups, along with outreach to the original business/property owners group and outreach to the original neighborhood group, and use our enhanced public negotiating skills for a good meeting before it comes to Council, so Council is presented with the latest version of what the community feels like they can live with together. This amendment was accepted by Councilman Russell.

Vice-Mayor Davis felt we have dealt with this a long time. He felt the proposal to collapse the two districts goes a long way. He felt what is before Council represents good work and is a good starting place. Instead of Council having a worksession to review what we have already

been told, he would prefer it go back to the community and then from that point go back to the Commission. After than, then it can come back to Council in the form of a worksession, if necessary. He didn't see a worksession to bring Council up to date would be terribly helpful at this point.

Councilman Russel agreed to the amendment to the motion in that it will add an additional step for conversation in order for all the stakeholders to look at the changes to see if there is buy in.

The amended motion made by Councilwoman Cape and seconded by Councilman Russell carried on a 5-2 vote, with Vice-Mayor Davis and Councilman Mumpower voting "no."

D. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO CREATE A MIXED USE DEVELOPMENT DISTRICT

This public hearing was discussed and withdrawn in conjunction with Public Hearing C and E.

E. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO ESTABLISH DEVELOPMENT STANDARDS FOR PARKING GARAGES

This public hearing was discussed and withdrawn in conjunction with Public Hearing C and D.

V. UNFINISHED BUSINESS:

VI. NEW BUSINESS:

A. BOARDS & COMMISSIONS COUNCIL LIAISON ASSIGNMENTS FOR 2008/09

Discussion and appointments were made for the City Council liaison and mandatory seats for Council on the various boards and commissions. City Clerk Lipe has a complete listing of all appointments made.

VII. OTHER BUSINESS:

Claims

The following claims were received by the City of Asheville during the period of December 21, 2007 through January 10, 2008: Bobcat of Asheville (Parks & Recreation), Julie Jamieson (Streets), Robert Morgan Sr. (Transit), Mary Lucas (Fire), Martin Melody (Sanitation), Claude Brown Jr. (Transit), John R. Follett (Transit), Janet Cordell (Transit), Patrick Temple (Water) and Betty Martin (Streets). These claims have been referred to Asheville Claims Corporation for investigation.

Lawsuits

The City received the following Complaint on December 19, 2007: The Estate of Mark Wayne Thompson and Jeffrey Lawrence Brown vs. the City of Asheville and the Asheville Police Department. The nature of the proceeding is a Complaint for wrongful death and personal injury resulting from negligence of Asheville Police Department officers.

The City received the following draft Complaint and Settlement Brochure on December 19, 2007: Troy Steven Wyatt vs. the City of Asheville and the Asheville Police Department. The

nature of the proceeding is a Complaint for personal injury resulting from negligence of Asheville Police Department officers.

Miscellaneous

Councilwoman Cape welcomed the City's first Sustainability Energy Coordinator Maggie Ullman, whose responsibilities will include supporting the Sustainable Advisory Committee, to do research and maintain an energy use inventory with measurements for the City and to do community outreach.

Councilman Davis said that there is a high incident of radon in Buncombe County and urged citizens to pick up a free radon test kit from the Extension Agency or from the WNC Regional Air Quality Agency on Mt. Carmel Road.

Mayor Bellamy congratulated the citizens of Asheville as being designated as a "Happy City."

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Rev. Spencer Hardaway said that he would e-mail Council of his comments regarding the Citizen Police Review Board.

Mr. Reid Thompson asked for clarification of limiting public access to the audio visual equipment during the public comment period. Mayor Bellamy said that she enforces the City Council's Rules and in their Rules adopted April 13, 2004, it reads "Any document or information that is to be used in a public hearing or public comment period shall be furnished in advance to the City Clerk in an electronic format or 15 copies thereof. This rule may be waived for good cause." In response to Councilman Newman, Mayor Bellamy said that the documents must be submitted 14 days prior to the Council meeting, which was agreed upon by Council in July of 2007.

Mr. Fred English commented on the Pack Square Project, the Veterans Memorial, and the City regulating flags.

Mr. Jim Groce asked for a point of clarification regarding his two properties on Merrimon Avenue. City Attorney Oast said that he would investigate his point and contact him.

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 9:00 p.m.

CITY CLERK

MAYOR

BUNCOMBE COUNTY

CITY OF ASHEVILLE

CITY COUNCIL

MINUTES

VOLUME: 83

(JANUARY 22, 2007 - JUNE 24, 2008) (PAGES: INDEX – 465)

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Tuesday – January 22, 2008 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; Councilman William A. Russell Jr.; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Keisha Lipe

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilwoman Cape gave the invocation.

I. PROCLAMATIONS:

Assistant Director of Parks & Recreation Debbie Ivester introduced the City's new Cultural Arts Superintendent Diane Ruggerio.

II. CONSENT AGENDA:

At the request of Councilman Mumpower, all the Consent Agenda Items, except for Consent Agenda Items "A" and F" were removed from the Consent Agenda for separate discussion and/or individual votes.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JANUARY 15, 2008

B. BUDGET AMENDMENT FOR A GRANT FROM THE U.S. DEPT. OF JUSTICE TO FUND THE SECOND YEAR OF THE WEST RIVERSIDE OPERATION WEED AND SEED PROGRAM

This item was removed from the Consent Agenda for separate discussion and/or individual vote.

C. BUDGET AMENDMENT FOR AN APPROPRIATION FROM THE STATE OF N.C., DEPT. OF HEALTH AND HUMAN SERVICES, DIVISION OF AGING, AND THE LAND OF SKY REGIONAL COUNCIL/AREA AGENCY ON AGING THROUGH THE SENIOR CENTER GENERAL PURPOSE FUNDING FOR THE SENIOR OPPORTUNITY CENTER

This item was removed from the Consent Agenda for separate discussion and/or individual vote.

D. BUDGET AMENDMENT FOR AN APPROPRIATION FROM THE STATE OF N.C., DEPT. OF HEALTH AND HUMAN SERVICES, DIVISION OF AGING, AND THE LAND OF SKY REGIONAL COUNCIL/AREA AGENCY ON AGING THROUGH THE SENIOR CENTER GENERAL PURPOSE FUNDING FOR THE HARVEST HOUSE

This item was removed from the Consent Agenda for separate discussion and/or individual vote.

E. BUDGET AMENDMENT FROM THE CITY MANAGER'S CONTINGENCY FUND TO SUPPORT SPONSORSHIP FEE FROM THE CITY OF ASHEVILLE TO SUPPORT THE 2008 ADVANCE AUTO PARTS BIG SOUTH CONFERENCE WOMEN'S BASKETBALL CHAMPIONSHIP

This item was removed from the Consent Agenda for separate discussion and/or individual vote.

F. RESOLUTION NO. 08-12- RESOLUTION AUTHORIZING CROWELL FARMS DRIVE, EAST FARM CREEK DRIVE, WEST FARM CREEK DRIVE, POLE BARN DRIVE, SILO DRIVE AND SLOSMAN DRIVE TO BECOME PUBLICLY MAINTAINED STREETS

Summary: The consideration of a resolution authorizing Crowell Farms Drive, East Farm Creek Drive, West Farm Creek Drive, Pole Barn Drive, Silo Drive, Slosman Drive to become publicly maintained streets.

Section 7-15-1(f)-4.a requires that streets dedicated for public uses be accepted by resolution of City Council.

Crowell Farms Drive, East Farm Creek Drive, West Farm Creek Drive, Pole Barn Drive, Silo Drive, Slosman Drive are streets in Crowell Farms Drive. This area was annexed effective January 1, 2008. As a part of the annexation agreement, we agreed to accept these streets for maintenance so long as the right-of-way was provided by the property owners. The right-of-way has been provided by the property owners in all the streets listed in this request.

Following City Council's approval of this resolution, Crowell Farms Drive, East Farm Creek Drive, West Farm Creek Drive, Pole Barn Drive, Silo Drive, Slosman Drive will be added to the official Powell Bill list.

Pros:

- The City will receive Powell Bill funds from the NCDOT to maintain the roadway.
- The City will be fulfilling the annexation agreement for the Sardis Road by accepting these streets. Provided the property owners provide right-of-way, we may have some additional streets to be added in this calendar year.

Con:

- Powell Bill funds will not cover 100% of the cost to maintain the street.

Staff recommends City Council approve a resolution authorizing Crowell Farms Drive, East Farm Creek Drive, West Farm Creek Drive, Pole Barn Drive, Silo Drive, Slosman Drive to become publicly maintained streets.

RESOLUTION BOOK NO. 31 - PAGE 64

G. RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH THE CLEAN WATER MANAGEMENT TRUST FOR A GRANT FOR THE PURPOSE OF CONSTRUCTING WATER QUALITY MEASURES IN THE DINGLE CREEK WATERSHED

This item was removed from the Consent Agenda for separate discussion and/or individual vote.

H. RESOLUTION REQUESTING A GRANT FROM THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES TO DEVELOP STORMWATER BEST MANAGEMENT PRACTICES DESIGN GUIDELINES

This item was removed from the Consent Agenda for separate discussion and/or individual vote.

I. RESOLUTION REQUESTING A GRANT FROM THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES TO CONSTRUCT STORMWATER BEST MANAGEMENT PRACTICES AT THE STEVENS-LEE CENTER

This item was removed from the Consent Agenda for separate discussion and/or individual vote.

J. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT FOR PROFESSIONAL SERVICES WITH KIM MCGUIRE TO DEVELOP AND DELIVER AN INTRODUCTORY PRESENTATION ON GROWTH MANAGEMENT AT CITY COUNCIL'S RETREAT ON FEBRUARY 4, 2008

This item was removed from the Consent Agenda for separate discussion and/or individual vote.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilwoman Cape moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Russell and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

B. ORDINANCE NO. 3574 - BUDGET AMENDMENT FOR A GRANT FROM THE U.S. DEPT. OF JUSTICE TO FUND THE SECOND YEAR OF THE WEST RIVERSIDE OPERATION WEED AND SEED PROGRAM

Summary: The consideration of a budget amendment, in the amount of $200,000, for a grant from the U.S. Department of Justice to fund the second year of the West Riverside Operation Weed and Seed program.

In October 2004, elected officials, City staff and Asheville citizens mobilized to develop comprehensive strategies to address issues of law enforcement, neighborhood restoration, and prevention/intervention/treatment programs and activities in the West Riverside area of Asheville as part of a Weed and Seed initiative. The program was introduced to the community via a series of public meetings to determine the concerns of residents of the target area, and was received favorably with the understanding that residents would be integrally involved in the planning and implementation of the initiative.

An application was submitted in October 2005 to the U.S. Department of Justice for official recognition as part of the Weed and Seed Program. In July 2006, the U.S. Department of Justice announced the designation of Asheville as an "Officially Recognized" site for the federal Weed and Seed initiative aimed at reducing crime and improving quality of life. Official recognition made the City of Asheville eligible to apply for Weed & Seed funds once a year over a five year period. The first funding application was approved and awarded in August 2006.

In August 2007, Assistant Attorney General, Regina B. Schofield announced the City of Asheville's application for second year funding as a continuing site was approved in the amount of $200,000. 50% of the funds will be used to support law enforcement and community police programs; and 50% will be used to support neighborhood initiatives such as youth services, parenting programs, health and nutrition programs, vocational programs, neighborhood clean ups, housing services, and the salary of the Weed & Seed Site Coordinator. A portion of the award, $25,000, is specifically earmarked for gun violence prevention and education. No City funding will be required to support this second-year grant.

The West Riverside Operation Weed and Seed Steering Committee, residents and several community based resource agencies such as the Housing Authority, Asheville City Schools, Children First, YMCA/YWCA, ARP/Phoenix and others continue to collaborate to improve quality of life for the residents of the West Riverside area and Asheville.

Pros:
- Significantly reduce violent crime and drug activity in an area of Asheville that has high crime activity.
- Provide a comprehensive crime prevention plan to address law enforcement, neighborhood restoration and prevention/intervention/treatment programs for the residents of the target area.
- Mobilize community residents to collectively improve the conditions in the target area.
- Provide resources for residents as a means of personal growth and development.
- Multi-agency collaboration to address the social, educational, economic and cultural issues in the target area.
- Leverage resources to sustain the program and replicate the strategies in other problem areas in the city.

Con:
- Some resistance to change by the residents who live in the target area.

The Parks and Recreation Department recommends City Council to approve the budget amendment in the amount of $200,000 to establish a budget for the second year of the West Riverside Operation Weed and Seed program.

Councilman Mumpower stated that he had no trouble with the program, however, he felt if the City is going to have these programs, the City should pay for them and not use borrowed money from the federal government which contributes to the almost ten trillion dollar debt.

Councilman Newman's response is directed at Consent Agenda B, C, D, G, H and I. He said that the citizens of Asheville pay state and federal income taxes and it would be extremely irresponsible for the City to basically say we are not going to accept any state or federal resources for economic development, public safety, community development, environmental protection, etc., until we reform all of these systems at the state and federal government. To say that people in this community who pay taxes are not going to get any of their taxes back to this community for important community projects, infrastructure needs, economic development, environmental protection, etc. would be irresponsible.

Councilwoman Jones' response is directed at Consent Agenda B, C, D, G, H and I. She said that we must be working together, not in a single mentality. In addition to the stewardship of utilizing our taxpayer's investment in the state and federal government, it's important that we build on each other's expertise and knowledge.

Councilman Mumpower's response is directed at Consent Agenda B, C, D, G. H and I. He felt it was irresponsible for us to participate in a federal process that is draining the life out of the country. We don't need to fix the system, but we need to encourage some restraint. In terms of the state, no system reform is necessary, just a shifting of priorities. We are dependent on the

State of North Carolina to uphold our court system and to make it work to support our police and our community. That is working together, but they are neglecting that system and focusing on things that we can take care of ourselves.

Mayor Bellamy said that last year Council heard a report from our Police Chief talking about the results of their work in the WECAN neighborhood. We are seeing a reduced crime rate, increased safety, more citizen involvement and more support for our police officers. She said that the U.S. Dept. of Justice's upfront investment is a worthwhile investment. With their upfront investment we see results.

Councilman Newman moved for the adoption of Ordinance No. 3574. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 24 - PAGE 311

C. ORDINANCE NO. 3575 - BUDGET AMENDMENT FOR AN APPROPRIATION FROM THE STATE OF N.C., DEPT. OF HEALTH AND HUMAN SERVICES, DIVISION OF AGING, AND THE LAND OF SKY REGIONAL COUNCIL/AREA AGENCY ON AGING THROUGH THE SENIOR CENTER GENERAL PURPOSE FUNDING FOR THE SENIOR OPPORTUNITY CENTER

Summary: The consideration of a budget amendment, in the amount of $16,404, for an appropriation from the State of North Carolina, Department of Health and Human Services, Division on Aging and the Land of Sky Regional Council/Area Agency on Aging through the Senior Center General Purpose Funding for the Senior Opportunity Center.

Funds will be used to 1) remodel the greenhouse, and 2) purchase a new copy machine. The allocation requires a 25% local match which will be provided via in-kind services with in-house project management and labor.

Pros:

- Repair leaking windows, skylight and roof in greenhouse
- Replace planting table in greenhouse to make it accessible
- New copy machine support senior center operations and save staff time in travel and mileage to city hall to use a copy machine

Con:

- None

The Parks and Recreation Department recommends City Council to approve the budget amendment, in the amount of $16,404, to establish a budget for improvements at Senior Opportunity Center.

Councilman Mumpower had no trouble with the service; however, he was concerned about taking money from the state. Where we need their help is with providing a timely and accountable court system. The state needs to focus on core responsibilities like our court system, and not participate in things of this nature, which is our job not theirs.

Mayor Bellamy's comments are directed at Consent Agenda items C and D. She said the assistance from the State is in the area of helping our seniors. Most seniors are experiencing difficult times and to have the assistance from the Dept. of Health and Human Services to help our seniors have a social outlet through the recreational centers, where the City is paying the majority of the bill, is a good investment for the State of North Carolina.

Councilman Newman moved for the adoption of Ordinance No. 3575. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 24 - PAGE 313

D. ORDINANCE NO. 3576 - BUDGET AMENDMENT FOR AN APPROPRIATION FROM THE STATE OF N.C., DEPT. OF HEALTH AND HUMAN SERVICES, DIVISION OF AGING, AND THE LAND OF SKY REGIONAL COUNCIL/AREA AGENCY ON AGING THROUGH THE SENIOR CENTER GENERAL PURPOSE FUNDING FOR THE HARVEST HOUSE

Summary: The consideration of a budget amendment, in the amount of $16,404, for an appropriation from the State of North Carolina, Department of Health and Human Services, Division on Aging and the Land of Sky Regional Council/Area Agency on Aging through the Senior Center General Purpose Funding for the Harvest House.

Funds will be used to 1) make improvements to the back porch area of the center, 2) install a coffee bar in the kitchen, and 3) renovate the shuffle board area. The allocation requires a 25% local match which will be provided via in-kind services with in-house project management and labor.

Pros:

- Improve the back porch area of the center, a popular gathering space with senior citizens, by improving the landscaping to enhance the natural light and reduce yard debris, repair roof and install an awning.
- Install coffee bar to make better use of space in a small kitchen and design it to better support events and programs.
- Renovated deteriorated shuffle boards for use by senior citizens.

Cons:

- None

The Parks and Recreation Department recommends City Council to approve the budget amendment, in the amount of $16,404, to establish a budget for improvement at Harvest House.

Councilman Mumpower felt that if the City of Asheville wants the improvements at the Harvest House, the City should pay for it. The state needs to focus on their core responsibilities and let the City of Asheville take responsibility for their own programs.

Councilman Newman moved for the adoption of Ordinance No. 3576. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 24 - PAGE 315

E. ORDINANCE NO. 3577 - BUDGET AMENDMENT FROM THE CITY MANAGER'S CONTINGENCY FUND TO SUPPORT SPONSORSHIP FEE FROM THE CITY OF ASHEVILLE TO SUPPORT THE 2008 ADVANCE AUTO PARTS BIG SOUTH CONFERENCE WOMEN'S BASKETBALL CHAMPIONSHIP

Summary: The consideration of a $10,000 sponsorship from the City of Asheville to support the 2008 Advance Auto Parts Big South Conference Women's Basketball Championship hosted by UNC Asheville.

UNC-Asheville is the host of the 2008 Advance Auto Parts Big South Conference Women's Basketball Championship March 14-16, 2008. It is the second of a two-year package as part of a collaborative bid with the Asheville Convention and Visitors Bureau, Biltmore Farms LLC and several other prominent community members to bring the tournament to Asheville for two years.

In 2007 the Advance Auto Parts Big South Conference Women's Basketball Championship made a $750,000 economic impact in Asheville and brought in teams from Virginia, South Carolina, Alabama and North Carolina. The 2007 tournament received sponsorship support from AT&T, Real Yellow Pages, Citizens Fuel, Pepsi Cola Bottling Company, Jan Davis Tire and Verizon Wireless.

The 2008 tournament will expand to include a week of activities centered on health, wellness, sports and civic involvement for the Big South Conference members and the Asheville community. The City of Asheville is invited to be the Pisgah Level Sponsor as the presenting sponsor of the Women's Basketball Tournament Week in return for an investment by the City of $10,000. In return, the City will receive the Pisgah Level Sponsorship benefits listed below.

- One-page ad in the tournament program
- Logo placement on al local tournament promotional materials and website
- Venue signage in named areas
- Opportunity for a booth during the tournament
- Opportunity to speak in named area
- Recognition as a tournament sponsor during all UNC-A 2007-2008 men's and women's basketball season
- One 30-second commercial per game during the UNC-A 2007-2008 men's and women's basketball season
- 10 VIP tournament passes
- Access to additional general admission tickets for Asheville area youth and other city initiatives

Funds to support the sponsorship are available in the City Manager's contingency fund. A budget revision is required to make the funds available for this expense. Once the $10,000 is allocated, it will leave a balance of $55,000 in the City Manager's contingency fund for the remainder of Fiscal Year 2007-09.

Pros:
- Invest in the local initiative to bring large sporting event to Asheville that result in economic impact
- Partner with our community organizations and sponsors to support the tournament and bring recognition to Asheville

Con:
- None

The Parks and Recreation Department and the City Manager's Office recommend City Council approve a budget revision in the City Manager's contingency fund for $10,000 to support the sponsorship fee.

Councilman Mumpower felt that the City taxpayer dollars should not be used to fund this basketball conference. The money should be raised by the community and private business.

In response to Councilman Russell, Vice-Mayor Davis said that we are in the second year of a partnership with UNC-Asheville in sponsoring the Women's Tournament. The Tournament brings in a number of people to the City and our participation last year included taking a lot of the intercity kids to the Tournament. There was a lot of good exposure for the City. The relationship with the Tourism Development Authority, Chamber of Commerce and UNC-

Asheville has further developed and we are entering into other areas of partnership, i.e., baseball field, and prospects of another 2-year bid for 2009-10 at the Civic Center. This partnership connects very well with our Strategic Goals of health and fitness. This is a good collaboration among entities in the community and has great worth to the community.

Councilman Mumpower said that he agrees with the program, but when we have a lot of people in the community who are struggling to pay taxes and other bills, to spend $10,000 to sponsor a basketball tournament is wrong.

Councilman Newman moved for the adoption of Ordinance No. 3577. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 24 - PAGE 317

G. RESOLUTION NO. 08-13 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH THE CLEAN WATER MANAGEMENT TRUST FOR A GRANT FOR THE PURPOSE OF CONSTRUCTING WATER QUALITY MEASURES IN THE DINGLE CREEK WATERSHED

Summary: The consideration of a resolution authorizing the City Manager to execute an agreement with the Clean Water Management Trust Fund for a grant in the amount of $330,000 for the purposes of constructing water quality measures in the Dingle Creek watershed.

In 2005, the City of Asheville was awarded a grant from the Clean Water Management Trust Fund in the amount of $133,000. This money was for the purpose of designing and permitting water quality improvements in the Dingle Creek area. This design is complete and the permitting should be complete in March 2008.

The City is in the process of completing the Watershed Stormwater Engineering Analysis. This project has been incorporated into this plan.

The deadline for applying for this grant is January 31, 2008.

Pro:

- If the grant is awarded it will assist in the construction of water quality improvements in the Dingle Creek watershed.

Con:

- The cost to the City is $66,000 of the total project costs of $330,000. The money for the match is currently budgeted in the Stormwater Budget.

The City's contribution to the project will be $66,000 or twenty percent of the amount of the grant. This money is budgeted in the current Stormwater Budget.

Staff recommends City Council approve a resolution authorizing the City Manager to execute an agreement with the Clean Water Management Trust Fund for a grant in the amount of $330,000 for the purposes of constructing water quality measures in the Dingle Creek watershed.

Councilman Mumpower said that this is the City of Asheville's watershed and we should not be using money from another source. The more you do that, the more difficult it is to determine accountabilities.

Mayor Bellamy's comments are directed at Consent Agenda Items G, H and I. She said these items are from an unfunded mandate from the federal government dealing with stormwater.

The State of North Carolina is going to assist us in addressing an unfunded federal mandate. She sees this as a public partnership and a great investment.

Councilman Newman moved for the adoption of Resolution No. 08-13. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 31 - PAGE 65

H. RESOLUTION NO. 08-14 - RESOLUTION REQUESTING A GRANT FROM THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES TO DEVELOP STORMWATER BEST MANAGEMENT PRACTICES DESIGN GUIDELINES

Summary: The consideration of a resolution requesting a grant from the North Carolina Department of Environment and Natural Resources (NC DENR) to develop a Stormwater Best Management Practices (BMP) Design Guidelines, in the amount of $24,000.

As part of the new Stormwater and Erosion Control Ordinance adopted in August 2007, some developments are required to provide stormwater best management measures to improve the quality of the stormwater that leaves their site. We are currently using the State stormwater manual to recommend and approve systems that will meet this requirement. Since these approve methods are state-wide, they do not focus on topography specific to the mountains. We would like to work with the local North Carolina State University Water Quality Group to develop Stormwater Best Management (BMP) Design Guidelines to serve this purpose.

The total cost of the document and training would be $48,000. The City would be required to pay half of this costs or $24,000. This money is currently budgeted in the Stormwater Budget.

Pros:

- If the grant is awarded it will assist in the cost of the developing Stormwater BMP Design Guidelines.
- These guidelines would be developed specifically for the mountainous terrain.
- The work would be performed locally by the North Carolina State University Water Quality Group.

Con:

- Con: The cost of the work would be $24,000.

Staff recommends City Council approve a resolution requesting a grant from NC DENR to develop a Stormwater BMP Design Guidelines, in the amount of $24,000.

Councilman Mumpower said we should not be reaching to the State as they have their own responsibilities to uphold as we have ours.

Councilman Newman moved for the adoption of Resolution No. 08-14. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 31 - PAGE 66

I. RESOLUTION NO. 08-15 - RESOLUTION REQUESTING A GRANT FROM THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES TO CONSTRUCT STORMWATER BEST MANAGEMENT PRACTICES AT THE STEVENS-LEE CENTER

Summary: The consideration of a resolution requesting a grant from the North Carolina Department of Environment and Natural Resources (NC DENR) to construct Stormwater Best Management Practices (BMP) at the Stevens-Lee Center.

A grant is available from NC DENR, Division of Water Resources, Water Projects Section to construct a stormwater management project at the Stevens-Lee Center. This grant will pay for two-thirds of the costs of construction.

The installation of a stormwater management project at this location will serve to reduce the pollutants that flow off the parking lot. The project will also serve as an educational opportunity for the community.

The amount of money requested is $66,000. The City's cost would be $33,000 for the project. This money is currently budgeted in the Stormwater Budget.

Pros:

- If the grant is awarded it will assist in the cost of constructing a stormwater management project. The grant will cover 66.6 percent of the costs.
- This project could be used for educational purposes.

Con:

- The cost of the work would be $33,000.

Staff recommends City Council approve a resolution requesting a grant from NC DENR to construct Stormwater Best Management Practices (BMP) at the Stevens-Lee Center.

Councilman Mumpower said we should not be reaching to the State as they have their own responsibilities to uphold as we have ours.

Councilman Newman moved for the adoption of Resolution No. 08-15. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 31 - PAGE 67

J. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT FOR PROFESSIONAL SERVICES WITH KIM MCGUIRE TO DEVELOP AND DELIVER AN INTRODUCTORY PRESENTATION ON GROWTH MANAGEMENT AT CITY COUNCIL'S RETREAT ON FEBRUARY 4, 2008

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract in an amount not to exceed $1,200 for professional services with Ms. Kim McGuire to develop and deliver an introductory presentation on growth management at City Council's retreat on February 4, 2008.

In a memorandum dated January 4, 2008, Mayor Bellamy shared a preliminary draft of the agenda for City Council's upcoming retreat scheduled for February 4-5, 2008. In the same memorandum, she explained her intent to approach City Council for consideration of approving an agreement with Kim McGuire to develop and facilitate a presentation on growth management during our retreat. Ms. McGuire submitted a proposal for the delivery of these services.

Growth management and sustainability have been top goals for City Council during the last several years. It is Mayor Bellamy's hope that Council will devote time during the retreat to discuss these topics and explore where we are now and where we want to be in the future. She

believes hiring Ms. McGuire to facilitate the discussion (a local professional with experience in program development and research) will help Council create a concise vision for next steps.

The funding for Ms. McGuire's services can be paid from the Manager's Contingency Budget. A current accounting of the Manager's Contingency is included below.

	Manager's Contingency Budget
$100,000	Beginning balance
- 10,000	Assisted UNCA with archiving historical documents
- 25,000	Gun buy back program
$65,000	Balance

Finally, she wanted to clarify that Ms. McGuire's services are separate from the facilitation services provided throughout the retreat by Mr. Andy Atkinson.

It is Mayor Bellamy's recommendation that City Council approve the resolution authorizing the City Manager to enter into a contract in an amount not to exceed $1,200 for professional services with Ms. Kim McGuire.

Councilman Mumpower felt this is a significant amount of money and he disagreed with the expenditure.

Councilwoman Cape was supportive of Council having the discussion on growth management but could not support $1,200 for what seems to be a 45-minute program. She would be more interested in having a longer discussion as part of a worksession. She was extremely interested in the idea of regional growth management, but would like to enter into that conversation at the retreat and talk about where the City should go.

Mayor Bellamy felt, as a Council, we should discuss this issue at the retreat and Ms. McGuire is working to create a comprehensive proposal to City Council to look at growth and development. The Community Foundation of Western North Carolina is currently looking at seven western counties for growth and development management. She saw this as an opportunity to connect with potential resources for our City to address this issue on not just a City-wide basis but eventually a County and Western North Carolina basis. The proposal outlines where the money will be spent - not just for the 45-minute presentation.

In response to Councilman Newman, Mayor Bellamy said the City will receive the expertise and presentation material from Ms. McGuire. The type of material we will be receiving isn't just words on paper, but actual utilization tool that we could support. The 45-minute presentation will be followed by dialogue.

Councilman Newman could support the action if we start the conversation at the retreat in terms of regional growth, and then if we have subsequent worksessions, Ms. McGuire might also be available to follow-up on those discussions.

Mayor Bellamy said that Ms. McGuire's proposal spells out what she anticipates accomplishing. She is willing to meet with Council individually in order to get Council to come to a consensus of how and where we want to grow. This is someone who was willing to assist Council in that endeavor.

Vice-Mayor Davis felt the 2025 plan offers some of that same direction, but not on a regional basis.

Councilwoman Cape thought the goal of the strategic retreat was for each Council member to have the opportunity to identify what their strategic priorities are. She felt Council has

very little time to discuss their priorities and then from that discussion to craft what presentations we would like to see. Regional growth management is a big topic of hers but this is not necessarily the manner in which she would like for it to move forward. She feels like we are moving in a direction that is setting the agenda for Council without Council having the opportunity to participate in that agenda-setting. She would prefer to reserve the retreat for Council conversation about the directions we would like to go. It may be that we want to hire Ms. McGuire after the retreat and tell her we would like to see conversation about regional development. But, that that conversation should take place amongst Council first. She feels the retreat is giving small opportunities for Council to weight in on their strategic items, especially since they have not even been called by a facilitator to see what their interests are. She feels we are locking ourselves into a very managed retreat with very little room for individual Council members to engage.

Mayor Bellamy reminded Councilwoman Cape that she did send an e-mail on what she would like to talk about at the retreat. As a Council, at the retreat, Council always has an opportunity to talk about priorities and what they want to accomplish. That has not changed. But she did feel like, based upon conversations she heard all last year and based upon feedback from public hearings about developments and how we want to see our City grow, she wanted to be proactive and facilitate a better discussion about how we move forward.

Councilwoman Jones felt that regional growth management is something that a lot of Council feels is very important. She felt Ms. McGuire could frame her presentation accordingly and felt confident that we can meet everyone's goals around this conversation.

Councilman Newman sees this as the start of the conversation about regional growth and what Council can do to have good planning within the City and also look for those opportunities to work with other governing bodies on regional approaches. Since we don't have a new Planning Director, he felt it's important to have the expertise to help set the stage for some of those conversations. He felt this will add value to the subsequent Council conversations about this issue.

Councilwoman Jones moved for the adoption of resolution authorizing the City Manager to enter into a contract in an amount not to exceed $1,200 for professional services with Ms. Kim McGuire to develop and deliver an introductory presentation on growth management at City Council's retreat on February 4, 2008. This motion was seconded by Councilman Newman and failed on a 3-4 vote, with Mayor Bellamy, Councilwoman Jones and Councilman Newman voting "yes" and Vice-Mayor Davis, Councilwoman Cape, Councilman Mumpower and Councilman Russell voting "no."

III. PRESENTATIONS & REPORTS:

A. ASHEVILLE DRUG COMMISSION'S DRUG ENFORCEMENT OFFICER OF THE YEAR AWARD

On behalf of City Council, Councilman Mumpower, Chairman of the Drug Commission, was pleased to recognize Asheville Police Sgt. Eric Lauffer as the co-winner (with Lt. Scott Allen of the Buncombe County Sheriff's Department) of the Drug Commission's "2007 Drug Enforcement Officer of the Year Award".

Police Chief Bill Hogan spoke about the dedication of Sgt. Lauffer and was honored to have him part of the Asheville Police Department.

B. MOTION TO SUPPORT THE TRUST FOR PUBLIC LAND LISTING THE CITY OF ASHEVILLE AS A POTENTIAL PARTNER ON AN APPLICATION TO THE N.C. CLEAN WATER MANAGEMENT TRUST FUND FOR ACQUISITION OF WALLER TRACT FOR THE HOMINY CREEK GREENWAY

From Staff Report: "At the January 9, 2008, Greenway Commission meeting, Maggie Clancy of TPL presented a funding strategy for acquiring the above-mentioned tract. The Greenway Commission has been aware of this site as a potential land acquisition opportunity since April, 2007. TPL has determined that the Waller Tract fits within the guidelines for the N.C. Clean Water Management Trust Fund (CWMTF), which provides for the acquisition funding for water quality and greenway projects to match funding from local government, state or federal sources. TPL is prepared to be the lead applicant on a CWMTF grant if the city is willing to be listed as a potential source for matching funds for the land acquisition ($126,720). The deadline for applications is February 1, 2008, thus the reason for the urgency in moving this agenda item through the Greenway Commission to Asheville City Council.

In the Fiscal Year 2007-08 Parks Capital Improvement Program (CIP), City Council approved $590,000 funding earmarked toward the French Broad River Greenway Extension project, which will connect to the future Hominy Creek Trailhead. The $590,000 is committed to four right-of-way acquisitions, which are under negotiation, and construction costs.

This specific parcel (Waller Tract) is included in the conceptual plans for future development of the Hominy Creek Greenway corridor, which is currently ranked ninth (9th) on the Greenway Priority list. This section of Greenway has not been designed or funded and the exact corridor will not be determined until we complete the update of the Comprehensive Master Plan, which is currently under way. We do not have a defined timeline on when this corridor will be designed or fully developed.

In reviewing this request, staff has identified the following options for city council to consider:

1) Accept the Greenway Commission's recommendation that TPL seek funding from the Clean Water Management Trust Fund and other sources, and commit funding necessary for the local match, to include city council prioritizing additional capital funding necessary in next year's CIP.
2) Accept the Greenway Commission recommendation and direct staff to reprioritize next year's park CIP priorities and allocate $126,000, thus moving other priorities accordingly.
3) Modify the Greenway Commission recommendation and direct TPL to pursue the entire cost of the property acquisition ($290,000) through the CWMTF application process with no local allocation.

Staff is prepared to carry forward on any of the three (3) options as outlined above."

Ms. Maggie Clancy, Project Manager with the Trust for Public Land (TPL), informed Council of the project and to seek Council's approval to include the City as a potential source for matching funds on an application to the NC Clean Water Management Trust Fund (CWMTF) for acquisition funding.

Using a map, she showed said the Waller Tract is in West Asheville. The tract was once part of trolley line in the late 1880's to connect downtown Asheville to the Sulphur Springs Hotel. It was the first electrical powered trolley line in Western North Carolina. The Waller tract is included the Phase I of the Hominy Creek Greenway. The Hominy Creek Greenway was identified as a major west to east greenway corridor in the 1998 Greenway Master Plan. The Waller tract is 11.91 acres and comprises about one mile of the Phase I Hominy Creek greenway corridor. Phase I of Hominy Creek greenway is ranked 9th on the Parks & Recreation Department's Greenway Priority List. Three other additional properties are needed for Phase I. The property owners have not been approached by TPL or the City about required right-of-way.

The project was brought to TPL and the Greenway Commission by Doug Barlow, who lives in the neighborhood. Early on they discovered the land owner's family needed to sell the property to support the elderly land owner who is in a nursing home. In August of 2007, she and

Mr. Barlow met with the Greenway Commission and gained support to get an appraisal on the property and start negotiations with the land owner. The land appraised for $290,000. Last fall she met with the Parks & Recreation Department to discuss funding alternatives, including the CWMTF. The Department recommended she brief Council on the project and the proposed funding structure for the acquisition. She presented the funding plan to the Greenway Commission on January 8, 2008, and received the Commission's support for the acquisition and for the funding plan. TPL and the landowner are in agreement on the terms of the purchase and TPL anticipates having a fully executed purchase agreement signed by the end of January, 2008. The acquisition of the Waller tract fits within the guidelines for the CWMTF. The Trust Fund will provide acquisition funding for water quality and greenways projects to match funding from local governments or other sources. TPL is prepared to be the lead advocate on a clean water grant if the City is willing to be listed as a potential source for matching funds for the acquisition. If the City allows TPL to go ahead with the clean water application, the following is how the acquisition of the money will be allocated:

CWMTF totals $153,170; City of Asheville matching funds - $126,720; private donations and matching funds - $26,460; for the total project cost of $306,340.

If the proposal to the CWMTF is successful and the City approves the acquisition structure, the City will acquire 11.91 acres of land for around $10,000 an acre, as compared to the appraised value of the land of approximately $24,000 per acre.

The proposed timetable is as follows: CWMTF application due February 1, 2008 (only one deadline a year); firm commitment of funds from City in spring in 2008; CWMTF grant decision is September, 2008; TPL purchase property by December 31, 2008; and TPL conveys the property to the City in January 2009. The City funds will not be needed until early in 2009.

In conclusion, they are seeking City Council's approval to include the City of Asheville as a source for matching funds on an application to the CWMTF for acquisition funding for the Waller tract.

Councilman Newman pointed out that even though this is listed as one of the top ten projects on the Greenway Priority List (9th), there are several other projects more important ahead of this project.

Ms. Clancy explained the urgency for the acquisition is that the family wants to sell the land. It's one mile of greenway and that will bode well for the CWMTF application.

Councilman Newman said that (1) in light of the fact that the Greenway Commission has reviewed the project and is recommending support for this project; (2) in recognition of the opportunity to leverage our investment with the CWMTF dollars; (3) in light of the fact that this is listed as one of the top ten greenway priority projects in the City; and (4) we can get one mile of land for a relatively low investment, he moved to support listing the City as a potential partner on the application to the CWMTF for the Waller tract. This motion was seconded by Councilwoman Jones.

Councilwoman Cape wanted Council to discuss how much money we will have available each year for projects like this. There are a lot of conflicting needs in the community. She questioned if we applied for the CWMTF grant, does that preclude any of the other parts of the property being built on. Ms. Clancy responded that the CWMTF will put an easement on the flood plain portions of the property. There are some portions of the property that will be out of the easement area and you can consider appropriate uses for those portions.

In response to Councilwoman Cape, Ms. Linda Giltz, Chair of the Greenway Commission, said that the Commission, working with staff, developed the Greenway Priority List last spring, about the same time they were learning about this Waller tract. They didn't know the

opportunity that was there with this tract, or they may have rated this slightly higher had they known this information ahead of time. The Commission did talk about the eyes on the park and housing next to the greenway a little bit. We thought that would be one way to help this be more affordable. There are two parts of the property that can be built upon.

Councilwoman Cape wanted to support the project and at the same time to make it even more affordable to the City so we can do more projects across the City. She asked the Greenway Commission to research the idea of whether it would be viable for the City to separate those parts of the property and sell them.

Councilman Mumpower felt that the City has trouble protecting and maintaining what we have now with parks. He can't argue against creating more parks, but felt you can go bankrupt with good deals. He felt that this money is not out of reach for many of the wealthy people who live in Asheville who speak about how wonderful greenways are but leave the taxpayers to pay for it.

In response to Vice-Mayor Davis about the Greenway Commission's enthusiasm about this project given the City's limited funds, Ms. Glitz said the Commission sees this as a good opportunity for land acquisition at this point - to start putting the pieces together for that greenway section. But, they realize it's not a high priority to get something built on the ground right away because there are other priorities that are higher for that.

When Vice-Mayor Davis asked about the application deadline, Ms. Clancy said that they can submit the application listing the City as a potential source of matching funds and then have several months to get the City's commitment to get the funds. She said they can withdraw their application or lower the match. They have several months to play around with the interior workings of the funding.

Mayor Bellamy asked that the Greenway Commission talk with the Metropolitan Sewerage District to see if any of their right-of-ways in that area might work collaboratively with this project. It might be worthwhile to see if the greenway could continue along their right-of-way.

In response to Mayor Bellamy, Ms. Clancy said that the TPL doesn't have a master plan, but are interested in working with the Parks & Recreation Department, along with the Greenway Commission, to make their priorities TPL's priorities.

Mayor Bellamy noted that this is the second project in recent months brought to Council but noted that the Nasty Branch project (which was number 6 on the top ten list) didn't make it to Council's agenda. She recalled that the Nasty Branch project was faced with needing a match from the City, but it didn't reach Council's agenda for it to be considered. The Nasty Branch project is an intercity greenway project that is higher on the list. She felt we needed a formalized fair process advising people of the steps they need to go through to reach City Council's agenda. Mayor Bellamy asked City Manager Jackson to work with the TPL to formalize a process for that to happen.

Councilman Newman felt the master planning process will be helpful to get away from these one by one piecemeal decisions. He hoped that as we move forward and decide on whatever amount of resources we can invest in greenways that we can delegate that to the Greenway Commission to largely make the decisions about the most strategic way to make that. He felt Council's primary job is to figure out how much can we afford to invest on greenways and largely allow the Greenway Commission, in working with community groups that are involved in it, to decide what is the most effective way to invest those in the priorities and to stretch those dollars out by levering opportunities.

The motion made by Councilman Newman and seconded by Councilwoman Jones carried on a 5-2 vote, with Vice-Mayor Davis and Councilman Mumpower voting "no."

IV. PUBLIC HEARINGS:

A. **PUBLIC HEARING TO CONSIDER ADOPTION OF THE WECAN (WEST END/CLINGMAN AVENUE NEIGHBORHOOD) CITIZENS MASTER PLAN AS A COMPANION DOCUMENT TO THE COMPREHENSIVE PLAN ADOPTED BY THE CITY OF ASHEVILLE**

RESOLUTION NO. 08-16 - RESOLUTION TO ADOPT THE WECAN (WEST END/CLINGMAN AVENUE NEIGHBORHOOD) CITIZENS MASTER PLAN AS A COMPANION DOCUMENT TO THE COMPREHENSIVE PLAN ADOPTED BY THE CITY OF ASHEVILLE

Mayor Bellamy opened the public hearing at 6:03 p.m.

Urban Planner Alan Glines said that this is the consideration of a resolution to adopt the WECAN (West End/Clingman Avenue Neighborhood) Citizens Master Plan as a companion document to the Comprehensive Plan adopted by the City of Asheville. This public hearing was advertised on January 11 and 18, 2008.

The WECAN Citizens Master Plan was created in 2000 and included public meetings and a charette process to create a master plan for the community. The plan has been referenced informally ever since it was created but was never officially adopted. The master plan is still relevant for the community today and provides guidelines for growth for the area and a vision for infill development opportunities. The WECAN Citizens Master Plan will be a companion document to the *Asheville City Development Plan 2025*.

In 2000 Mountain Housing Opportunities (MHO) with assistance and sponsorship from the WECAN, the City of Asheville and several other sponsors undertook a process to develop a comprehensive master plan for the area bordered by I-240 to the north, Clingman Avenue to the East, Lyman Street to the South and the French Broad River to the west.

The planning process focused on a charette format and also included smaller meetings for the community and stakeholder groups. Through these meetings the general goals, constraints and visions for the community were determined. The goals centered on pedestrian connections, infill development, strengthening the residential character of the heart of the neighborhood, commercial infill at appropriate locations, calming traffic speeds, improving sense of place and maintaining affordable home ownership opportunities.

From these far-reaching goals the design team developed a series of recommendations that became part of the plan. The plan provides a conceptual vision for the entire project boundary.

The plan highlights are summarized here:

- Traffic improvements and gateway development at Patton Avenue, Clingman Avenue and Hilliard Avenue.
- Neighborhood housing infill development for vacant parcels scattered throughout the community.
- Architectural compatibility of new homes with existing homes.
- Park and greenway space added throughout the neighborhood.
- Riverfront redevelopment providing space for commerce and art studios.
- Natural green-type features to improve the quality of stormwater runoff and habitat creation.
- New connecting streets throughout the neighborhood.

Plan Details: The West End neighborhood was founded around the various mills and other river area businesses that became the employment base of the neighborhood. Over the years various roadway projects including I-240 and the Smoky Park Bridge severed the neighborhood and reduced its original boundaries. As a result, Haywood Street Methodist Church and West Haywood Road businesses were disconnected from the rest of the neighborhood and downtown. About the same time as mills closed down, the economic base of the neighborhood declined.

Roadway Improvements: The plan provides a vision for various roadway and road connections through the neighborhood. In the area beside the river, I-240 and Patton Avenue consume a lot of valuable property because of the wide merge lanes providing access to the highway. The plan shows the reclamation of the Patton Avenue area adjacent to the WECAN neighborhood as a major gateway boulevard. The boulevard would be lined with mixed-use buildings and provide a traffic oval to create a gateway feature. Neighborhood scale connections are also recommended in the plan. A green space is shown in the area of Haywood Street at Jefferson Drive as a gateway feature for the neighborhood. A new street is recommended for the top of the hill area occupied by the Asheville Transit Center and running parallel to Jefferson Drive. Throughout the neighborhood various footpaths and other pedestrian connections are recommended to improve connectivity.

The Top of the Hill: The plan encourages infill development throughout the residential neighborhood, referred to as the "top of the hill" area. The plan was somewhat ahead of its time by recommending higher infill densities to support transit use, affordable housing units, and mixed-use development. Interestingly, these discussions influenced the direction and adoption of new initiatives for the entire City and have become commonplace today. Multifamily development may be a part of the proposed infill but should be sensitive to the historic character of surrounding residential properties. In some cases, greater densities may be difficult given compatibility issues in the neighborhood but may be more appropriately sited along the connecting corridors. The challenge of affordable housing often means that densities must be pushed upward to support the affordable housing subsidy. This has been a topic of discussion in the neighborhood as projects have been proposed. Architectural compatibility with new construction can assist the neighborhood in accepting these proposals. This may include simple gable roof forms and front porches facing the street among other things. A generous portion of the master plan provides character studies for residential buildings. Some of the plans show small footprint homes for steep slopes and a 'manor' style home for multifamily projects.

The River Arts District: The river front and art district is featured in the master plan. This area overlaps with the recently adopted Wilma Dykeman Riverway Master Plan (Dykeman Plan). The recommendations of the two plans are similar with many common goals. The Dykeman Plan provides a greater focus on this area though and is the primary document to provide direction. The WECAN plan can provide direction if needed or for areas not covered in the Dykeman Plan. Both plans emphasize the following goals: protecting water quality and consideration for the special nature of the floodplain, strengthening a strong arts economic base in the river area, additional park development, mixed-use buildings with residential units on upper floors, regional attractions and opportunities for small business development.

In summary, the WECAN Citizens Master Plan is a vision document that provides direction for the west-central area of the City. The area is truly a gateway to many neighborhoods including downtown Asheville, West Asheville and the French Broad River. The strength of the neighborhood is still intact and is being improved by redevelopment projects and a very active neighborhood association. Even though the plan is nearly eight years old now it is still relevant for future growth and many of the highlights of the plan are informing the discussions we are having today about mixed-use development, infill development, affordable housing and greater infill densities. The plan will be a useful support document for the Asheville City Development Plan 2025 and will help guide appropriate and desirable development in the WECAN area.

Although no zoning changes are being brought forward as a part of the adoption of the master plan, the plan does make recommendations to adopt the master plan with a developable overlay for the neighborhood with the intent that this overlay could control some of the development proposals that may be proposed in the neighborhood. Staff and the neighborhood favor another approach instead of the overlay; recently several projects have been reviewed and approved as conditional zoning projects. Through this review process, developments are reviewed for context and rezoned with a project master plan on a case by case basis with a final approval coming from City Council. During the review process the neighborhood has an opportunity to weigh in on the proposal and voice any comments or concerns. Each project is reviewed for compliance with City codes and ordinances as a part of the process. Staff feels that the conditional zoning process is an effective tool for neighborhood development proposals.

Staff has reviewed the proposal to adopt the WECAN Citizens Master Plan with representatives of the WECAN Association. The members of the group felt adoption of the plan would be good for the neighborhood and generally support the proposal. Some people expressed concern that the infill densities may be out of scale with the neighborhood but felt that the conditional zoning process would ensure that each project is reviewed individually.

Pros:

- The plan was developed by members of the neighborhood and area stakeholders using a City endorsed neighborhood process.
- Formalizes the plan and provides context for reviewing proposals that come forward (this has already been occurring informally) the plan provides a comprehensive view and vision of the neighborhood.
- Rezoning requests may be inspired by this document and will be evaluated in reference to it.

Cons:

- The plan is now seven years old and the situation has not been reevaluated
- Some residents have concerns about the proposed density of the in-fill housing
- Some current residents may not have been involved in the master plan development

The Planning and Zoning Commission reviewed the proposal and voted (5-0) to recommend adoption of the master plan at their December 5, 2007, meeting.

Staff recommends City Council approve a resolution accepting the WECAN Citizens Master Plan as a companion document to the Comprehensive Plan adopted by the City of Asheville.

The President of the WECAN Association spoke in support of the Master Plan in that it is an excellent tool to be used in neighborhood development.

Ms. Leslee Kulba didn't think the government should be involved in subsidies. She felt it was a nice plan as long as the private sector will support it.

A member of the Board of the WECAN Association spoke in support of the Master Plan in that it is a visioning document that will help shape the future of their neighborhood.

At 6:16 p.m., Mayor Bellamy closed the public hearing.

Councilman Mumpower felt that master plans usually represent an exercise in using other people's money to control other people's property. After seeing some of the sketches in the Plan, he felt this Master Plan is a far reaching fantasy and it's not realistic to our financial

capabilities. He felt there are parts in the Master Plan that make good sense and are down to earth, but this is not a practical master plan.

When Councilwoman Cape asked about what the procedural benefits would be if there are no incentives for people to follow them, Mr. Glines said that developers can look at the Plan and see what is appropriate for the area. It's similar to the 2025 Plan, except this Plan gives more detail to a specific area of the City. When plans are submitted, our plan reviewers will look to see if those plans fall into this area. They will share the Plan with the developer to see how their plan might fit into the area.

Councilwoman Jones felt that if there ever was a mixed neighborhood of income, race and occupancies, it's this neighborhood. This is an exciting Plan and everyone needs the chance to dream.

Mayor Bellamy noted for the record that at the time this plan was being created she was an employee of MHO, but she is no longer employed by them. Since the creation of the plan, several things have been implemented, i.e., the Metropolitan Sewerage District (MSD) has improved the sewer system in the area; the City improved water lines in the area; the citizens implemented a pocket park in the neighborhood; the Chamber of Commerce, partnering with the City, is placing a sign at the western gateway entrance into downtown; and housing being developed along Clingman Avenue (Merritt Park Condominiums have received national recognition). All this activity shows her that the private sector, the City Water Department, MSD and the Chamber of Commerce has seen the usefulness of this Plan as a tool to have implemented. In addition, the 2025 Plan tells us that we should have more neighborhood plans. Many times the Planning Department staff has held this plan as a good example of the community coming together to discuss issues before there is a problem in their area. She is very supportive of this plan as it takes into consideration what we want as a community and what the neighborhood residents have said they would like to see in their community.

Mayor Bellamy said that members of Council have previously received a copy of the resolution and it would not be read.

Councilwoman Jones moved for the adoption of Resolution No. 08-16. This motion was seconded by Vice-Mayor Davis and carried on a 6-1 vote, with Councilman Mumpower voting "no".

RESOLUTION BOOK NO. 31 - PAGE 68

B. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO MODIFY THE HEIGHT STANDARDS IN THE URBAN VILLAGE DISTRICT

ORDINANCE NO. 3578 - ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO MODIFY THE HEIGHT STANDARDS IN THE URBAN VILLAGE DISTRICT

Mayor Bellamy opened the public hearing at 6:31 p.m.

Urban Planner Jessica Bernstein said that this is the consideration of an ordinance to amend the Unified Development Ordinance (UDO) to modify the height standards in the Urban Village District. This public hearing was advertised on January 11 and 18, 2008.

The Urban Village zoning district was created in September 2001 to allow for high-density mixed-use developments that contribute to the place-making character of the built environment. When established, the maximum building height allowed in the district was 80 feet, with the intent

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that predominant height of structures within the Urban Village be within a range between 20 and 60 feet.

In 2006, an amendment to the district was passed that increased the maximum height allowed to 150 feet but retained the same intent for predominant structure height between 2 and 6 stories. A requirement was added that structures taller than 6 stories be located internally to the site unless surrounding context could support the scale and mass. This amendment allowed for taller structures to be considered where appropriate but did not intend for 150 foot buildings to be the norm.

Due to an increase in Urban Village proposals, City Council has directed staff to re-evaluate the maximum height allowed in the district. Staff found that the majority of Urban Village proposals that have received master plan approval by City Council since the conception of the district have consisted of structures smaller than 80 feet, suggesting that successful Urban Village proposals with building heights predominantly between 20 to 60, and up to 80 feet are appropriate to Asheville. In at least one development where a taller structure was approved in the master plan, the developer later downsized the building considerably.

Additionally, 80 feet is the uppermost height allowed in almost all other zoning districts, with the exception of the Central Business District (CBD) where there is no building height limit. Re-establishing this similar height restriction of 80 feet in the Urban Village District creates the possibility for tall, high-density development in a number of zoning districts within the city limits but retains the CBD as the urban core and the location for the city's tallest structures.

On December 5, 2007, the Asheville Planning and Zoning Commission made a positive recommendation to approve the amendment (by a vote of 4-1) to return the maximum height of structures allowed in the Urban Village district to 80 feet. The member of the Commission voting against this proposal felt that 80 feet was too low and that a height limit of closer to 100 feet would be more appropriate for Urban Villages. The Commission discussed adding a provision whereby an applicant could seek height greater than 80 in special exception cases where the surrounding context can support the increase.

Taking into account the Commission's desire to allow for additional height in certain circumstances and understanding that there may be potential Urban Village sites where some additional height would not impose a negative effect on the surrounding context, staff recommends limiting height to 80 feet with the inclusion of a provision for the City Council to allow for an increase in special exception cases. Such requests will be evaluated separately to ensure the appropriateness and compatibility of taller structures with adjacent neighborhoods or development.

Staff recommends that the maximum height for structures be returned to the original 80 foot limit and concurs with the Planning and Zoning Commission's recommendation for allowing greater height in appropriate conditions.

Pros:

- Reduction in height to 80' still allows for dense development with a mix of uses, structure sizes and building heights while integrating better with the existing location.
- Height limitation of 80' is more compatible with height intended for "predominant structures."
- Requests for additional height will allowed, but will be evaluated separately to ensure appropriateness.

Con:

- None identified.

Staff recommends City Council approve an ordinance amending the UDO to modify height standards in the Urban Village District.

Mr. Chris Peterson spoke against lowering the height standards. He felt that the people who can afford to build higher buildings ultimately brings jobs and a tax base to the City, both of which the City needs. He felt that height is needed in the Urban Village District to prevent sprawl.

At 6:41 p.m., Mayor Bellamy closed the public hearing.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Newman moved to approve an ordinance amending the UDO by lowering the height standards in the Urban Village District from 150 feet to 80 feet with the provision for the City Council to allow for an increase in special exception cases. This motion was seconded by Councilwoman Cape.

Councilman Russell has heard so much about growing up instead of growing out and this amendment to lower the height limits concerns him. This might be an opportunity to create some good development in good areas with good density. If the Urban Village District is limited to 80 feet, the cost per square foot will go up, which would be opposite to trying to create more reasonably priced housing. Personally he supported leaving the height at 150 feet.

Councilman Newman stressed that if we have the 80 foot limit, it doesn't preclude Council from approving projects where taller structures can be allowed. His concern is we don't want to give developers a false expectation that 150 feet is what normally is allowed in Urban Village zoned areas. With this amendment, we are telling developers that 80 feet is the norm, but if you want to make a case for a higher building, then City Council will listen.

Vice-Mayor Davis said that if we have an 80 foot height limit we are basically saying a 6 story building. He feels in some urban villages the height speaks well. He would be in favor of lowering the height limit from 150 feet to 100 feet.

Councilwoman Cape agreed with Vice-Mayor Davis and also pointed out that because of our topography, some buildings measure differently depending on which side is measured.

Councilman Mumpower felt that cities are where you create density and to create density is through height. He felt that height can make or break a project and since we are trying to fix a program that doesn't exist, he would not support the motion.

Mayor Bellamy agreed on lowering the height from 150 feet to 100 feet. She felt by lowering the height limit to 80 feet, we may be losing a lot of potential growth in the River District.

Councilwoman Cape offered a friendly amendment to the motion in that the height standards in the Urban Village District be reduced from 150 feet to 100 feet, with the provision for the City Council to allow for an increase in special exception cases. Councilman Newman accepted the friendly amendment.

The amended motion made by Councilman Newman and seconded by Councilwoman Cape carried on a 5-2 vote, with Councilman Mumpower and Councilman Russell voting "no."

ORDINANCE BOOK NO. 24 - PAGE 319

C. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE REGARDING CHANGES TO THE RIVER DISTRICT

ORDINANCE NO. 3579 - ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE REGARDING CHANGES TO THE RIVER DISTRICT

Mayor Bellamy opened the public hearing at 6:54 p.m.

Urban Planner Alan Glines said that this is the consideration of an ordinance to amend the Unified Development Ordinance (UDO) regarding changes to the River District. This public hearing was advertised on January 11 and 18, 2008.

The River District is created to celebrate, conserve, promote, and manage those areas on both sides of the French Broad and Swannanoa Rivers. The standards seek to encourage economic revitalization throughout the river valleys in a manner that complements the natural environment of the river. The River District is unique in that it allows any use that is not specifically prohibited in the list of uses or allowed in the district with special requirements.

This wording amendment is based on numerous conversations since the 2004 floods, recent rezoning conversations regarding River District properties, comments and direction from City Council and recent staff awareness of state statutes (NCGS Chapter 143, Article 21, Part 6) restricting certain uses in flood hazard areas staff became aware of the need for changes to the district. After the initial submittal to the Planning and Zoning Commission three meetings were held with members of a river related focus group to review the changes. Some of the changes were endorsed by the group; other items may not be completely accepted by the group.

The changes focus on uses that have the potential for environmental degradation from chemical or petroleum spills or pollution through downstream displacement of floatable materials during a flood event. The changes would allow salvage yards in areas not subject to the flood hazard area restrictions on sites in the River, Industrial and Commercial Industrial Districts.

The additions to the River District prohibited use includes:

- Chemical Storage facilities
- Hazardous waste management facilities
- Solid waste disposal facilities

In addition, the following uses are proposed to be added to the River District Uses by Right Subject to Special Requirements (USSR) section with restrictions that if they are operated in a way that met FEMA, state and local guidelines (such as but not limited to operating in an enclosed building or outside of the flood hazard area), would pose less of a threat of water quality damage from flooding:

- Automobile, truck other vehicle servicing and repairs
- Outdoor storage
- Recycling center
- Recycling collection center
- Recycling plant
- Salvage yard
- Storage tanks and containers mounted above ground
- Tanks used for storage of chemicals, oil or fuel subordinate to a use that is allowed in the river district

The special requirements for the recycling activities focus on operating the use in an enclosed building meeting FEMA, state and local guidelines. Storage tanks will be required to be secured and elevated above the base flood elevation. The salvage yard and automobile, truck

and vehicle servicing and repair would be allowed outside of the regulated flood hazard areas of a site. For salvage yards this is in agreement with the NC State adopted statute. Outdoor storage areas are proposed to be located on the site but elevated to meet FEMA, state and local guidelines. The FEMA, state and local guidelines are outlined and reviewed in the City of Asheville Environmental Protection Standards found in Article 12 as a part of the Unified Development Ordinance (UDO).

Staff also recommends minor changes to the Industrial District to complement what is being proposed in the River District. This is to ensure that there are sufficient places for the needed services and businesses to operate within the City of Asheville. Due to the heavy impact of uses and character of the Industrial District, the addition of these proposed uses should not impact the district in a negative way. The proposed items listed below would be added to the USSR section for the Industrial District:

- Automobile, truck and other vehicle servicing and repairs
- Salvage Yard

These two uses noted above are proposed to be allowed except in the special flood hazard areas as indicated on the Flood Insurance Rate Maps.

Finally staff is proposing two amendments to the definitions section for "salvage yard" and "recycling plant" for the purposes of clarification and regulating the uses.

He offered Council another amendment to the proposed ordinance before Council explaining that "salvage yard" is the current term used in the UDO. Staff is asking Council to instead use "salvage operation" as a broader term. Yard may be understood to mean "open air" which has been the subject of disagreement. This would change salvage operation to be reflected also in the USSR section for the River and Industrial Districts and the definitions section. Also "salvage operation" means a non-residential property used for the storage, collection and/or recycling of any type of equipment including but not limited to vehicles, appliances and related machinery.

A second amendment to the proposed ordinance before council is the addition of USSR for the Commercial Industrial District as follows:

Salvage Operation
a. Use districts: Commercial Industrial District
b. New uses and expansions of this type shall operate in an enclosed building
c. Outdoor storage is limited to 25% of the building size and shall be screened from view from adjacent properties

Recycling Plant
a. Use districts: Commercial Industrial District
b. New uses and expansions of this type shall operate in an enclosed building
c. Outdoor storage is limited to 25% of the building size and shall be screened from view from adjacent properties

Pros:
- Removes environmentally hazardous uses from the River District resulting in improvements to water quality and safety.
- Removes the opportunity for unenclosed floatables and reduces potential for downstream obstructions during a flood event.
- Brings City requirements in alignment with State Statutes.
- Retains the opportunity for storage and operations of some uses when located in structures meeting flood hazard standards.

- Industrial Districts provide additional opportunities for some uses with reasonable restrictions.

Cons:

- Some existing uses will be non-compliant.
- Grandfathered uses will have limited expansion potential unless they comply with the ordinance changes (a potential pro).

The Planning and Zoning Commission reviewed the proposed River District amendment over several meetings and voted (5-0) to recommend approval of the amendment at the December 5, 2007, meeting.

Staff recommends City Council approve an ordinance amending the UDO to amend the River District.

At 7:00 p.m., Mayor Bellamy closed the public hearing.

There was a brief discussion about the existing uses being non-compliant and how they can expand.

When Councilman Mumpower wondered why the City has to amend their ordinance when we are operating under state statutes, City Attorney Oast said that the state essentially delegates the authority for enforcement and regulation to the municipalities. In this particular case it makes sense to amend the UDO since this is a law we are responsible for enforcing.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Jones moved for the adoption of Ordinance No. 3579, with the two amendments outlined by Mr. Glines. This motion was seconded by Councilman Newman and carried on a 6-1 vote, with Councilman Mumpower voting "no."

In response to Mayor Bellamy's request about streamlining the UDO, Interim Planning & Development Director Shannon Tuch said that is something they have been discussing for quite some time. She explained why it is such a large endeavor to undertake. She said it is something they can work towards bringing to Council, but in the meantime they will "shoot for some low hanging fruit."

At Mayor Bellamy's request, and after receiving consensus of Council, City Manager Jackson said that staff will bring back a review of this and a suggested schedule that might be workable.

ORDINANCE BOOK NO. 24 - PAGE 321

D. PUBLIC HEARING REGARDING WOODFIN BOUNDARY AGREEMENT

Because staff did not attach a map with the information she sent to Woodfin Mayor VeHaun, Mayor Bellamy requested this public hearing be withdrawn from consideration until a later date.

At 7:13 p.m., Mayor Bellamy announced a short recess.

V. UNFINISHED BUSINESS:

A. RESOLUTION NO. 08-17 - RESOLUTION APPROVING AMENDMENT TO THE

AIRPORT AUTHORITY LEASE AGREEMENT

City Attorney Oast said that this is the consideration of amendments to Airport Authority lease agreement

The Airport Authority was established by interlocal agreement with Buncombe County in 1979. The initial term of the agreement was 25 years, or until 2005. In 1988, the agreement was amended to extend the term to 2018 (among other things). In November of 2007, Council approved several amendments to the interlocal agreement. Those same amendments were presented to the County Commissioners today (January 22); and it is his understanding that the County ratified the amended agreement.

Concurrent with the interlocal agreement, the City entered into a lease with the Airport Authority whereby it leased the Airport property to the Authority for a period of time co-extensive with agreement. In 1993, this term was extended to coincide with the 2018 expiration of the interlocal agreement. Over the years, several subsequently acquired properties have been incorporated into the lease.

The proposed amendment does several things:

1. Incorporates all of the previous amendments, including the amendments that added property to the lease.
2. Includes a provision allowing for the siting of a fire and police station.
3. Includes a provision that will allow for subleases to extend beyond the term of the lease for up to 20 years (Airport Authority requested 60 years and he would not object to that).
4. Allows Airport law enforcement personnel to use the police firing range.

Because this lease involves governmental entities, the usual procedural requirements that apply to the City's real property transactions do not apply in this case, and the City may authorize the amendments to the lease by adoption of the resolution.

Pros:
- Allows the Airport Authority to negotiate leases for commercially reasonable terms
- Incorporates several previous lease amendments
- Incorporates some revisions to the recently amended interlocal agreement

Cons:
- City may have to manage long term subleases if Authority is dissolved or terminates

If Council approves of the amendment to the lease and the terms outlined above, adoption of the resolution is recommended.

Airport Director David Edwards asked Council to consider a provision that will allow for subleases to extend beyond the term of the least for up to 99 years, as the City has done 99 year leases in the past. As things change, it may take longer terms to be able to amortize major projects. They are asking for as much flexibility as possible. On hotel properties, 50-60 years is not uncommon on a lease in order to achieve a hotel siting. They will be trying to bring some non-aviation development to the Airport and this lease term issue is a critical item in trying to bring some of those items to fruition as we try to move forward.

In response to Councilman Mumpower, City Attorney Oast said that the Airport Authority wants more ability to negotiate long-term leases without having to come before Council.

Councilman Mumpower didn't see evidence that we have a problem with certain decisions that the Authority makes, other than inconvenience and that seems to be relatively minor. This is a City asset and right now we can't benefit directly from that asset, but that doesn't

mean tomorrow that will change. He is reluctant to do anything that represents a surrender of our assets in any form. He will have to speak against the changes because he does not feel they are necessary. He feels that once you appoint an Authority, they have tremendous powers and marginal accountability.

Councilwoman Jones said that the Airport is clearly one of our greatest economic development resources and it is imperative that we do operate in a business-like fashion with greater efficiencies.

Councilman Newman supported establishing a provision that will allow for subleases to extend beyond the term of the lease for up to 60 years.

Councilwoman Cape said that earlier Council talked about having a regional growth management plan and having that conversation with our region. Therefore, she felt this seems premature to lock in a 99, 60 or 20 year provision until after we have conversation with the community.

Councilman Newman said that all land use policies and community development policies are things the City has full oversight and authority for. These are just about the mechanics of site specific development projects. He feels the Airport is already to such a high degree very regional in nature. We need to give the Airport Authority the mechanism to function as a healthy regional authority.

Councilman Newman thanked former-Councilman Bryan Freeborn for serving as Chairman of the Airport Authority. He felt City Council was very fortunate to have a representative from City Council who really brought a huge amount of passion to the Airport and got very actively involved in the Authority. He felt City Council was very well represented by former-Councilman Freeborn.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Jones moved for the adoption of Resolution No. 08-17, with the provisions outlined by City Attorney Oast and with the provision that will allow for subleases to extend beyond the term of the lease for up to 60 years. This motion was seconded by Councilman Newman and carried on a 5-2 vote, with Councilwoman Cape and Councilman Mumpower voting "no."

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B. DISCUSSION OF AN APPOINTED VS. ELECTED SCHOOL BOARD

Councilman Mumpower presented Council with the following PowerPoint on weighing the merits of Appointment vs. Election of the Asheville City School Board.

"Candor on current realities (1) the City school system teaches less than half the students living within the City limits - a majority of our City's students attend a county or private school; (2) the annual budget for teaching the system's 3,600 students is $50,000,000 (averages out at $13,500 per pupil expenditure versus $6,600 for Buncombe County system - figures taken off of the School Board's website); (3) the School Board is currently appointed by the Asheville City Council - the Council has no direct governance role with the Board once those appointments are made; (4) the gap in achievement between black and white students is dramatic and persistent - we (parents, communities, elected officials, administrators, etc.) are failing to bridge far too many of our children to a future of hope in an increasingly desperate world; (5) the drop out rate for all our students is approximately 30% - for minority students it's approximately 50%; (6) the impacts of a persisting drug-thug culture in our public housing developments and other vulnerable

neighborhoods spills into our schools in both subtle and dramatic ways; and (7) parental involvement with our schools and teachers is marginal.

On the plus side (1) we have a School Board that appears to be dedicated to high standards and the risks of meaningful change efforts; (2) Asheville High graduates some of the best and brightest students in the state; (3) we have teachers, administrators and people with demonstrated concern trying to make things better; and (4) there is incremental progress.

What's wrong with our School System? (1) we are plagued with excessive federal and state bureaucratic controls that limit local initiative and real accountability; (2) consolidation and outside authority has disengaged parents and communities from schools, teachers and students; (3) we have mocked the potentials of our schools by allowing dangerous and corruptive activity in many of our neighborhoods; (4) we continue to pat ourselves on the back while education in America slips further behind our world competitors; and (5) we throw money, programs and rhetoric at our children instead of building the only bridge that has ever worked - relationships.

So what should we be doing differently? (1) we need to persistently confront core issues such as the harmful impact of the drug-thug culture and our open air drug markets; (2) jobs, real jobs, continue to be our best social service. It is my belief that the flood of illegal alien labor has undermined our motivation to motivate, train, and uplift our own citizens - especially minorities; and (3) without high standards and people who care, we will continue to fail many of our children. They know that many of us do not really care and that we would be more involved in protecting them and resisting the harms if we did.

Ninety-four percent of America's school boards are elected (1) greater direct accountability and independence; (2) encourages parents and community investment - it becomes our Board versus theirs; (3) appointed boards are more easily manipulated, politicized, and stacked to support special or selfish interests; and (4) our continued failure to fix our school problems points to a need for urgency and change - electing our School Board members will help illuminate the issues.

In conclusion (1) we are surrendering too many of our children; (2) what we really care about becomes urgent and we fix it; (3) there are evidently far too many people who do not care; (4) electing School Board members illuminates the issues; (5) electing School Board members connects voters; (6) those who are aware and connected tend to care; and (7) those who care are more likely to act.

There is urgency. Electing our School Board members is a place to start."

Councilwoman Jones said both elected and appointed bodies can fail or can succeed. She was sure all of Council wants to fix the achievement gap and improve the dropout rate. If this was an answer, we would all approve it (even though we don't have the authority to make that change). In her research, she found no correlation between governance models regarding improvement in dropout rates or decreasing in achievement gaps. From Councilman Mumpower's presentation, she highlighted relationships. She feels that because of the way Council has chosen School Board members, we do have members that have relationships in the schools and with the children. She cited several examples of those relationships. If the magic is in the relationships, at this moment we have appointed a body that has relationships. That should not be lost. She believed that the general consensus is that appointed bodies, while there may be some political issues involved, contain less politics than elected bodies. What we would lose with an elected board has to do with people's access to serve, because to win you have to raise money. One advantage that we currently have is we are able to, through the appointment process, try to have a diverse group of people, not only in terms of race, but in terms of gender, background, business, non-profits and parents. That is something that can make for a strong board and a board with not only vision but with the common sense to move an agenda forward. There are some good things are happening, but they are not happening fast. She feels it would

be bad timing when we do start to see changes and we start to see trust being built to change the structure. While she thinks there is merit to the elected system, she would be hesitant to change, just for the sake of changing. There is no reason to think this change will get us to a better place.

Councilman Russell talked to his family of educators and in every case they were supportive of an elected school board. He did think there is some merit about the community, parents and teachers feeling involved in that process. Some people he has talked with think it is very political to have a group appoint the school board. He personally did not like to run a campaign, but there is a message that comes out in someone's campaign and there is some buy-in for people who vote for you and some added accountability. He would like to think that the community might have a better idea of who they want leading the schools than 7 members of Council.

Councilwoman Cape was aware that the public wants to be involved in this discussion. She wondered what the process would be to engage the community in this question. She feels that the Board we have now is great, but there is something about being on the campaign trail and hearing ideas. She proposed we leave this question in the hands of the community instead of Council.

Councilman Mumpower moved to submit a resolution to our state representatives supporting a change in state law to support election of the Asheville School Board. This motion was seconded by Councilman Russell.

Mr. Al Whitesides, Vice-Chair of the Asheville School Board, spoke about his relationships in the school system. He said that this year, the City School System will celebrate its 121st Anniversary. We have always been in the top of the school systems in the state. The quality of education in Asheville has always been there. We are also fortunate with the diversity of the members. He supports the limited term limits as it takes advantage of the talents in our community.

Mr. Gene Bell, Chairman of the Asheville School Board, said that if Council wants to change to an elected school board based on statistics and success, it will be difficult to argue since we are in the top 2 or 3 in every category in the State of North Carolina. If the issue is the success of the school, 7-8 years ago he made a presentation to Council candidates about having the largest achievement gap in the State of North Carolina. We are one of the most successful school systems in the state, even recognized nationally 5-6 years ago as being one of the best schools in Time Magazine.

Councilwoman Jones was concerned this is a little elite' discussion - something we think the community needs and we're going to impose it. For over a year, she felt that this is a conversation that needed to come from the community forward and even in that absence of coming forward, we talked about it anyway. She doesn't think that that community feels that the way the school board is selected translates into fixing the achievement gap or dropout rate.

Councilman Newman felt there are pros and cons in both models. He was not supportive of this action because (1) he has never heard someone say they support the idea; and (2) that this change will result in changes we want to see happen to the educational institution. Unless there is a community push to change the model, he could not support the motion.

Councilman Mumpower felt this is an exercise in democracy. He felt the cost of a city school board election would be low. He reiterated some of the comments from his presentation. He did agree that we are making incremental progress, which goes up and down, but the base dropout rate statistic has not changed near as significantly as we need it to. He feels that you can successfully manipulate appointed boards because there are 7 people making the decisions and you need only manipulate 4 of those 7. It is much harder to manipulate a community. He does believe that elections will get people involved.

Mayor Bellamy said this discussion was based upon an appointed vs. an elected school board. She could not support the motion. If the true conversation is about the success of all students, then the conversation should be significantly changed. If we really want to help as a Council for our children to be successful, we should be putting a motion forward to increase the dropout age 16 to 17 or 18 years old. We are one of the last remaining states who has 16 as the dropout rate. We should also be supporting the initiatives of the Asheville-Buncombe Education Coalition, who has found out accurate data that mentoring and tutoring is what helps with children. When they come before Council for support through the outside agency process, she hoped we will support those efforts. Council also has the ability to fix our community centers which have become a safe haven for teenagers. That's where we should put our money. When she looks at the success of the school system, she has concerns about African American and White males who are increasingly dropping out, whether they are in city or county schools. The problem is the lack of hope. We can help their parents with better jobs. So when economic development opportunities become before Council, we should support those endeavors. We should help to ensure our students have something to strive for. She hoped that as a Council we would support the City of Asheville Youth Leadership Academy that provides 25 jobs for our youth to strive for over the summer. It should be Council's desire for every youth who wants a job in the summer to have a job. The basic premise that an elected vs. an appointed board will fix all the ills in our school system is flawed. She believes there are other issues that we as a Council should do to help engage our parents and our students (especially our teenagers) in fixing the educational system.

The motion made by Councilman Mumpower and seconded by Councilman Russell failed on a 2-5 vote, with Mayor Bellamy, Vice-Mayor Davis, Councilwoman Cape, Councilwoman Jones and Councilman Newman voting "no."

Mayor Bellamy moved to offer legislation to our state legislators to increase the dropout age from 16 to 17 years old. This motion was seconded by Councilwoman Jones.

City Attorney Oast said that he would like to have a little time to gather more information on this issue before Council adopts this in their legislative package. Therefore, Mayor Bellamy withdrew her motion and pointed out that this is evidence that whenever there is an opportunity to move forward, it doesn't. She hoped that, as a Council, we are really serious about addressing the dropout rate and helping all students succeed. She looked forward to further discussion on this issue as the year progresses and when opportunities come before Council to truly address the issue of achievement with all students.

VI. NEW BUSINESS:

A. RESOLUTION NO. 08-18 - RESOLUTION AUTHORIZING THE CITY TO ENTER INTO AN AGREEMENT FOR DONATION OF REAL PROPERTY ON RIVERSIDE DRIVE FROM PROGRESS ENERGY CORPORATION

ORDINANCE NO. 3580- BUDGET AMENDMENT FOR DONATION OF REAL PROPERTY ON RIVERSIDE DRIVE

City Attorney Oast said that this is the consideration of a resolution authorizing City Manager to enter into agreement for donation of real property on Riverside Drive (formerly Asheville MGP site) and associated budget amendment.

Progress Energy Corporation proposes to donate approximately 8 acres of land (herein "Subject Property") on Riverside Drive to the City of Asheville for use as a park. The Subject Property is located under and to the north and south of the RiverLink Bridge, which connects Clingman Avenue with Haywood Road, crossing the French Broad River. The property lies

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between the railroad tracks on the east and the river on the west. It is transected by Riverside Drive.

The property is the former site of a manufactured gas plant, and was acquired by Carolina Power & Light Company (now Progress Energy) from Public Service Gas Company. The gas plant was originally operated by Asheville Power & Light Company.

Due to its former use, the Subject Property has been classified as an inactive hazardous substance or waste disposal site under the North Carolina Superfund law. To this end, a "Notice of Inactive or Hazardous Waste Disposal Site," showing the Subject Property and listing the contaminants found in the soil and groundwater has been recorded in the Buncombe County Registry.

CP&L, now Progress Energy, has been engaged in remedial activities on the property, pursuant to a Remedial Action Plan (herein "RAP") entered into with the State of North Carolina Department of Environment and Natural Resources (DENR). Under the supervision of DENR, remediation is ongoing as to monitoring but has been completed to the extent that DENR has determined that the Subject Property is suitable for non-residential uses, but some activities, such as agriculture, child care centers, schools, and animal lodging, are prohibited. Excavation (less than 3 feet) and groundwater extraction are also prohibited. These restrictions are included in a document on record in the Buncombe County Registry (herein "Use Restrictions").

Effect of State DENR Involvement. When DENR enters into a RAP for an inactive hazardous waste site, the remediation is intended to bring the property back to suitability for some purpose. For reasons that are self-evident, a remediation to the point of suitability for residential (or "unrestricted use") is the highest standard. This rarely occurs with a contaminated site. More frequently, contaminated land is remediated to the point of suitability for non-residential purposes, like the Subject Property has been. Not uncommonly, these properties are turned over to the governments in the jurisdictions where they are located for use as parks, greenways, open space or for other non-developmental purposes.

In carrying out its responsibilities under the law, DENR investigated the Subject Property and detected the presence of toxic substances in the soil and groundwater and, working with CP&L, developed the RAP, which CP&L has voluntarily carried out, and continues to carry out. The point of doing this (besides cleaning the property up), is that, under the law, as long as the property is not used in violation of the recorded restrictions, PEC's, liability for further remediation is limited. If the Subject Property is transferred, the liability of successors in title is similarly limited. As to third parties who might claim some injury from exposure to the hazardous substance, the law does not provide immunity from a legal action, but the fact that the RAP has been complied with would be important.

The RAP survives any transfer, and PEC remains responsible to the State (but not to a subsequent owner) for carrying it out. The RAP for the Subject Property has been substantially completed; monitoring wells remain on the site, and there are reporting requirements. PEC would retain a right to come on the property to perform its duties under the RAP.

Scope / Effect of Agreement. The Agreement that the City is being asked to enter into is essentially an option that gives the City the right for 90 days to perform due diligence for real estate transactions such as surveys, title search, and field inspections. Final transfer of the property to the City is subject to final approval by Council in open session. To this end, the RAP and RAP Final Report will be made available to the City within 5 days of signing the Agreement. The City may terminate the Agreement for reasons related to survey or title, or if it determines that the Property is unsuitable for use as a park, or if final approval by the City is not obtained.

The Parks and Recreation Department has already made a preliminary determination that the Subject Property would be suitable for use in the City's Park system and RiverLink is

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supportive of the acquisition as well. Due to the size of the property, the anticipated complexity of the title, and the environmental review work that may be necessary to complete the City's "due diligence," a budget amendment in the amount of $15,000 is being requested to proceed with this review.

Pros:
- Adds a key link to the City's parks and greenway system
- Activates a previously unused tract of land in a reviving area of the City
- Low acquisition cost
- Limited liability

Cons:
- Remote potential for future environmental issues to arise
- Limited uses

If we accept the donation we would accept the property subject to some restrictions on the use. Two in particular would be that the donation would be subject not only to Progress Energy being able to go on the site to check monitoring wells and that kind of thing, but also subject to easements that currently exist on the property for things like power lines. Although there are restrictions on excavations deeper than 3 feet (it's not that we can't ever do it if we needed to sink a footing for a pavilion or something like that), it may be possible to do that with the permission of Progress Energy and the State.

It is recommended that Council authorize the execution of the Agreement, and adopt the budget amendment to fund the City's due diligence.

Councilman Mumpower asked how many of the services being provided by the consultant are we unable to do. City Attorney Oast said that there will be extensive title work that will need to be done to research all the outs for Progress Energy, Public Service Gas Company and Carolina Power and Light Company. We will also need to engage a consultant who will have to do more than the usual Phase I assessment for environmental work.

Vice-Mayor Davis explained his support of these actions and asked City Attorney Oast to determine if the little brick operations building adjoining the property is included in this action (which City Attorney Oast did not think it was).

Mayor Bellamy said this was an important piece of land in the reformation of how the river is growing, as well as the open space that is available for the community. When it comes to the City, we can actually refurbish it and put more eyes on the Jean Webb Park.

Mayor Bellamy said that members of Council have been previously furnished with copies of the resolution and ordinance and they would not be read.

Councilwoman Cape moved for the adoption of Resolution No. 08-18. This motion was seconded by Councilwoman Jones and carried unanimously.

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Councilwoman Cape moved for the adoption of Ordinance No. 3580. This motion was seconded by Councilman Mumpower and carried unanimously.

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VII. OTHER BUSINESS:

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

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Mr. Reid Thompson said that in June 2006, David Owens, a professor of law and government with the Institute of Government at UNC-Chapel Hill, sent a written report to City Manager Jackson which said, among other things that City staff could not legally allow such modifications. A quasi-judicial hearing with public input would be required before the City could allow alternative compliance. In Owens' words "In North Carolina, a land-use decision that requires application of standards involving judgment and discretion is a quasi-judicial rather than and administrative decision. A quasi-judicial zoning decision cannot be delegated to staff and it requires an evidentiary hearing prior to a decision." When Professor Owens presented his report to Council in August, 2006, City Council accepted the report and said it would work with Greenlife's owners on changes to address complaints the business violated City zoning laws. In January 2007 City Council gave Greenlife 30 days to submit a plan for corrective action. Greenlife failed to meet the deadline, but Council failed to take any action. All Council members took an oath of office to uphold the U.S. Constitution, North Carolina State laws and our local ordinances. Two dollars a square foot is an unrealistic number to convert an office building to a grocery store. Has anyone on Council looked into the possibility that something wrong happened here. Why does Council want to compromise our laws to benefit someone who lied on their application in the first place? The Constitution says we are all created equal under the law.

At the request of Councilman Mumpower, City Attorney Oast said that he would provide Council with the information about the initial permit and if the low dollar figure on the permit was reflective of the restoration.

Councilman Newman thanked Mayor Bellamy for helping bring the Mayor of Detroit, Michigan, to Asheville to speak at the Martin Luther King Jr. breakfast. He said it was one of the most inspiring speakers we have heard in a long time.

At 8:50 p.m., Councilman Mumpower moved to go into closed session for the following reasons: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: City of Asheville, BSF Retail & Commercial Operations, LLC, Bonny Wardlaw; and the Asheville City Council. The statutory authorization is contained in G.S. 143-318.11(a)(3); (2) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations, provided that any action authorizing the payment of economic development incentives will occur in open session. The statutory authority is contained in G.S. 143-318.11(a)(4); and (3) To establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of contracts for the acquisition of real property by purchase, option, exchange or lease. The statutory authorization is contained in G.S. 143-318.11(a)(5). This motion was seconded by Vice-Mayor Davis and carried unanimously.

At 9:27 p.m., Councilwoman Cape moved to come out of closed session. This motion was seconded by Vice-Mayor Davis and carried unanimously.

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 9:27p.m.

Tersha Lipe
CITY CLERK

Terry M Bellamy
MAYOR

Monday – February 4, 2008 - 1:00 p.m.
Tuesday - February 5, 2008 - 1:00 p.m.
Municipal Building - Asheville, NC
Council Retreat

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape; Councilwoman Diana Hollis Jones; Councilman R. Car Mumpower; Councilman Brownie W. Newman; Councilman William A. Russell Jr.; City Manager Gary W. Jackson; and City Clerk Keisha Lipe

Mayor Bellamy welcomed everyone to the City Council retreat. She then introduced Mr. Andy Atkinson who will be the facilitator for this meeting. He in turn reviewed the agenda, the role of the facilitator and the ground rules. Mayor Bellamy offered Council members to make any changes to the agenda, which they did not.

City Council Committees, Meetings & Worksessions

Worksessions

Mayor Bellamy brought forward discussion about how Council can address moving issues forward using the City Council Committees, if that is Council's wish. She felt that Council should return to having one worksession a month to work through issues, without public comment or votes. One of the main reasons worksessions were discontinued was because Council was taking positions, almost offering motions, and issues from the worksession were then being discussed again at the next formal meeting. The worksession will be an opportunity for Council to hear and work through longer-term issues from the staff, committees and Council.

Discussion surrounded whether Council will be overwhelmed with the City's business if they hold only two formal meetings a month; suggestion of the model the Buncombe County Commissioners use, which is a set amount of time before their formal meetings; concern that the worksessions prior to the formal meetings will bump into other Committee meetings, board and commission interviews, or business will not be finished prior to the formal meeting time; using worksessions to hear reports and presentations have the potential for moving the formal meetings along quicker; should worksessions be televised or not; suggestion to use the first Tuesday of the month as the worksession date and keep the second, third and fourth Tuesdays as formal meetings; worksession starting time at 3:00 p.m. vs. 5:00 p.m.; and why is the 3rd Tuesday recommended for worksessions.

City Manager Jackson said that staff is recommending reintroducing non-televised worksessions to incorporate more informal Council-staff discussions.

After discussion of reinstituting worksessions, it was the majority of Council's consensus to hold a televised worksession on the 3rd Tuesday of each month (beginning in March of 2008), and if a worksession is determined not to be needed for a particular month (which will be the exception, not the norm), that the 3rd Tuesday be a formal meeting. Worksessions will (1) consist of reports from the Committees, presentations, etc.; (2) start at 5:00 p.m.; and (3) be for informational purposes only.

Scheduling of Meetings

Mayor Bellamy advised Council members on the procedure of Council members placing an item on the formal meeting. She said that City Clerk Lipe will provide Council with a PDF form which Council members can fill out via e-mail with their agenda item request and send back to her. At that time City Clerk Lipe will meet with her and she will look at the future agendas and assign a meeting time for the Council member's request (which Council can expect the item will be on an agenda within 6 weeks, if possible). City Clerk Lipe will then e-mail the Council member back with the formal meeting date the item is scheduled, along with deadline within which the material needs to be submitted to her. City Clerk Lipe will be logging in the requests as they are received.

After a brief discussion about the procedure for placing Council items on the agenda, it was the majority of Council's consensus to (1) support Mayor Bellamy's PDF agenda request form; and (2) include on the form a space that notes if the agenda item is timely and also a space that shows if the Council member has contacted two other Council members to support the agenda item being placed on the agenda that the item be scheduled sooner than later.

Public Comment at Meetings - Copies

Councilman Newman initiated discussion about people who wish to use visual aids during the public comment portion of the meeting should not have to provide Council with 15 copies.

Mayor Bellamy said that anyone can put their visual aid on the presenter without providing 15 copies. City Council's Rules & Procedures provide that "Any documentary information that is to be used in a public hearing or public comment period shall be furnished in advance to the City Clerk in electronic format or 15 copies thereof." She said that Council can amend their rules, if they wish.

Mayor Bellamy asked former-City Clerk Maggie Burleson to advise Council of the reasoning behind 15 copies being provided.

In response to Mayor Bellamy, Information Services Technology Director Jonathan Feldman said that it is technically possible to load a PowerPoint Presentation on the presenter during the meeting, however, there will be a delay in the meeting to do that and/or the PowerPoint Presentation may not be compatible with the City's equipment. He said that he will provide Council with some options on how this process may work.

After discussion, it was the consensus of the majority of Council to amend the City Council rules to provide that "Any documentary information that is to be used … shall be furnished in advance to the City Clerk in electronic format or 3 copies thereof."

Public Comment at Meetings - Content

Mayor Bellamy asked for clarification as to whether Council will or will not allow public comment, under the Informal Discussion and Public Comment section, if the item was discussed on the agenda.

Councilman Newman felt that if Council received the agenda item purely for information purposes only and no public comment was allowed at that time, that it would be appropriate for the public to comment on that item at the end of the meeting.

Mayor Bellamy said that this issue will be brought back to Council to make a decision on this item.

Deadlines for Providing Information to City Clerk

City Manager Jackson initiated discussion on a City Council Rule 4 (b) which stated in part "… In order to facilitate preparation of the agenda package, written materials … that will be used in presenting an agenda item … shall be provided to the city clerk no later than two Thursdays prior to the day of the meeting at which the item is scheduled. The preceding sentence does not apply to items originating with the City Manager or City Attorney." He explained that the department directors sometime need additional time to compile their materials in order to give Council the most up-to-date information sometimes obtained at the last minute through meetings, etc. He asked the department directors be given the same latitude as the City Manager or City Attorney.

It was the consensus of Council to allow department directors the same latitude as the City Manager or City Attorney, but only as an exception and not the rule. Department directors are to continue to work aggressively to meet the deadline established in the rules. Mayor Bellamy instructed the City

Manager monitor those exceptions. City Manager Jackson said that he would work with City Clerk Lipe on a timeframe for reports.

City Council Committees

Mayor Bellamy initiated discussion concerning whether the four City Council Committees are worthwhile of Council's time.

Councilman Mumpower felt strongly that Council should filter all major policy issues through the Committees.

After a short discussion, it was the consensus of the majority of Council to continue with the four City Council Committees, with the full Council paying particular attention to and having the flexibility to decide which policy decisions should go to one of the Committees prior to being considered by the full Council.

Mayor Bellamy said that when she receives a Council request, she will ask if this issue has been reviewed by the appropriate City Council Committee, if necessary. City Clerk Lipe will send out an e-mail to Council asking for their preferences on which Committee, if any, they wish to serve on.

Goals for 2008

Community Forum Report

Assistant to the City Manager Lauren Bradley, briefly reviewed with Council the executive summary expressed by citizens at the City Council's community goal setting forum held on January 29, 2008, at the Randolph Learning Center: The top 5 results are as follows: (1) Improving mass transit and enhancing options for multi-modal transportation; (2) Affordable housing with a focus on public housing sustainability; (3-A) Keeping Asheville green with emphasis on greenways, open space and sustainability; (3-B) Protecting Asheville's sense of place/identity; and (3-C) Fiscal responsibility.

Ms. Bradley said that over the past year our organization has done a good job at taking seriously Council's commitment to promoting inclusive decision-making. We have had lots of public input sessions, neighborhood meetings, etc. In our last quarterly report to Council, we have had 15 input meetings in 3 months. In the last 6 weeks we have almost been doing 2 meetings a week. She felt staff has been doing a good job at the grass roots level to help make our programs better. She noted that she will be soliciting Council's input surrounding our strategic communications and coming up with a plan that looks beyond just public input and inclusive decision-making and whether we need to look at developing more strategic tools and strategies for communicating with the public.

In response to Vice-Mayor Davis about the how to obtain input from the broader community, Ms. Bradley explained how the City has contracted with a firm to do a statistically valid survey, which survey should yield results by June, 2008. The survey will be performed either by mail or telephone.

Financial and Management Background - Five-Year Financial Forecast

Chief Financial Officer Ben Durant updated Council on the long-range financial forecast. He said that one theme in the long-range forecast is the economic slowdown. Regarding property taxes, staff recently received the official 2007-08 assessed valuation data from Buncombe County and it showed that the City's tax base grew by 2.3% in the current year, after growing by 5.5% in the previous fiscal year. Regarding sales tax revenue, sales tax growth has slowed o 1.0% through the first months of the current fiscal year. We do, however, expect the sales tax growth to pick up in the second half of this year, but remain below the 5+% growth rates that have been experienced in recent years. He then explained that there will be limited funding available for any major new initiatives. He asked that Council keep that in mind in setting goals and to be cognizant of strategic initiatives that are already in place. He said it may be this year that Council's focus this year should be on maintenance of our existing programs. If we do

undertake any new initiatives, he would recommend that Council identify new and recurring revenue sources for that major new initiative. We always need to take care of our deferred maintenance and infrastructure. If Council decides to make that a priority, staff needs to know that soon so staff can look at various funding options, one of which could be a bond issue, etc.

Major Conclusions from Department Director Retreat

Assistant City Manager Jeff Richardson briefed Council on the staff discussion at the Department Director retreat held in December, 2007. He touched upon the themes of (1) invest more in our greatest asset, our people; (2) better quality vs. increased quantity; and (3) More opportunity for informal communication and dialogue to build elected official confidence and trust in staff.

City Manager Jackson touched on some issues from the Department Director retreat of staff doing a better job of making sure we keep everyone on Council informed, especially when we are committing significant staff time and energy to a particular item. Department directors have also committed additional time to meet in order to keep abreast of important issues for better communication.

Councilman Mumpower initiated discussion surrounding the following issue brought up at the Department Director retreat, as this issue has come up before: "Develop trusting relationships that allow staff to be candid and blunt about policy analysis, without fear for political retribution." He suggested an informal arrangement that any time there is a concern of political retribution or a Council member being involved in the day-to-day operations, that the Mayor, Vice-Mayor and City Manager meet and then make some decision on how to formally or informally act on that concern.

City Manager Jackson explained that when Council second-guesses staff or reviews policies or decisions from 2-3 years ago, those comments break-down staff's confidence that Council believes in them. Assistant City Manager Richardson also said that if Council has concerns of a Department Director's performance, to share those concerns with him and the City Manager (before those concerns are aired on the television or in the community) and let them hold the Department Director's performance accountable. He hoped that as staff moves forward with their business plans that staff puts that kind of data in front of Council and that their effort and performance is what it should be. Mayor Bellamy summarized that staff is asking for Council's respect and Council is asking for staff's respect as well.

Councilwoman Cape initiated discussion on when Council can talk to staff. City Manager Jackson requested Council try to reach him or Assistant City Manager Richardson with any questions. He will in turn get the information for Council and provide that information to all of Council as well. In addition, he said that many times he can provide Council with additional information on that topic. After discussion, it was the consensus of Council for Council to direct their questions through either the City Manager or the Assistant City Manager. However, if a situation arises that it is very convenient to obtain information from staff or if time is of the essence and the City Manager or Assistant City Manager cannot be reached, then it is appropriate for Council to contact staff directly. Additionally, if the information is something that has already been provided to all of Council, then the City Clerk can provide that information to Council. However, if Council is asking for information that requires a report to be generated, then the request should go to the City Manager or the Assistant City Manager.

Council Discussion

After a short discussion, City Manager Jackson said that if he receives an e-mail from a citizen who purports to have spoken with a Council member supporting a specific request, that he would contact the individual Council member first to verify the request.

Mayor Bellamy noted that staff's issue about interacting with Council members in more informal settings is a good idea; however, sometimes the media makes the statement about Council spending taxpayer money to socialize.

Mayor Bellamy felt that the building maintenance and operations budget should not be placed in the Parks & Recreation Department budget. City Manager Jackson explained that he is in the process of exploring reorganization, but in any event, building maintenance and operations will be an enterprise activity regardless of where it ends up.

In response to Mayor Bellamy's inquiry on how we can be more transparent with our finances, City Manager Jackson explained how we are instituting communication and marketing plans for each department.

Upon inquiry of Councilman Newman, Mayor Bellamy said that when a Council member requests someone to come up and respond to a question after the public hearing has closed, to remember to make sure the Council member thanks and dismisses the person so they can take their seat again.

Councilwoman Cape questioned the process of Council discussion. Mayor Bellamy explained that if a Council member has questions after they have already talked, that she will call on other members of Council who have not spoken yet, prior to allowing that Council member to speak again.

At 4:15 p.m., Mayor Bellamy said that the City Council retreat will continue at 12:00 Noon on February 5, 2008, and advised Council to bring their goals and priorities for discussion.

City Clerk Lipe reminded Council that at 12:00 Noon tomorrow, the retreat will begin with a closed session.

Tuesday, February 5, 2008 - Noon
Municipal Building - Asheville, NC

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; Councilman William A. Russell Jr.; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Keisha Lipe

Absent: None

Mayor Bellamy welcomed everyone to the continuation of the City Council retreat.

At 12:00 p.m., Councilwoman Cape moved to go into closed session pursuant to NCGS 143-318.11(a)(3) to consult with the City Attorney on a matter with the respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: the City of Asheville, the State of North Carolina, and Buncombe County (lawsuit regarding the validity of the Sullivan Acts). This motion was seconded by Vice-Mayor Davis and carried unanimously.

At 1:00 p.m., Councilwoman Jones moved to come out of closed session and return to the formal meeting. This motion was seconded by Vice-Mayor Davis and carried unanimously.

Goal Setting & 2008 Action Planning

Mr. Andy Atkinson, facilitator, explained how City Council needs to work on the City's vision, mission and goals and City staff will work on the objectives.

Mayor Bellamy said that it was her hope that City Council will have 3-4 measurable items that we feel we can move forward as a community.

At 2:00 p.m., Mayor Bellamy asked for a moment of silence for former City employee Johnny Coxton, elevator operator in the Parks & Recreation Department.

Using the long-term goals from the 2007-08 City Council's goals and vision, discussion took place when each Council member explained their goals for the year as follows, categorizing them into one of the eight priority areas, being (1) community building; (2) critical services and infrastructure; (3) economic development; (4) growth, development and land use; (5) housing opportunities; (6) natural and built environment; (7) sense of place, heritage and the arts; and (8) intergovernmental relations. If a goal did not fall into one of the eight priority areas, the new goal would be noted as an action item and would not be lost in the strategic operating plan process.

Mayor Bellamy

- Develop a long-term capital plan for the City's aging infrastructure including sidewalks, parks and recreation facilities, parks and greenways and City Hall (critical services and infrastructure)
- Work with the Land-of-Sky Regional Council, the community and neighboring communities on transportation, growth and development issues (intergovernmental relations)
- Work for a better relationship with our state and federal legislators (intergovernmental relations)
- Alternatives for gangs for our youth (action item)
- Continue to foster conversations with our County Commissioners and State delegation on the issue of water and financial fairness to the City of Asheville (intergovernmental relations)
- Asheville to have their own supply of emergency supplies opposed to waiting on the emergency supplies coming from Charlotte, North Carolina (action item)
- Bond program (action plan)

Vice-Mayor Davis

- Pursue HOPE VI-type opportunities for public housing (housing opportunities)
- Improve customer service experience at the Civic Center (sense of place, heritage and the arts)
- Under new leadership at the Civic Center, the deferred maintenance and facility improvements should be funded through a more aggressive schedule, perhaps part of a bond package (sense of place, heritage and the arts)
- Pursue Riverfront redevelopment (action item)
- Expand partnership with UNC-Asheville (intergovernmental relations)
- Full partner with the Economic Development Coalition (action item)
- Support a nuisance court (action item)
- Reinstitute fireworks on New Year's Eve (action item)
- Beef up the Light Up Your Holidays decorations downtown (action item)

Councilwoman Cape

- Recognize the critical role that City government plays in issues of climate and energy (natural and built environment)
- Implement an adaptation planning task force or focus group (action item)
- Certificate of Energy Performance (action item)
- Encourage and reduce energy consumption of privately-owned buildings (natural and built environment)
- Energy efficiency funding in City facilities and in City operations (natural and built environment)
- Promote community peace and justice (community building)
- Establish a Community Peace and Justice Committee (action item)
- Place a moratorium on downtown business development until the Downtown Master Plan is adopted

Councilwoman Jones

- Explore opportunities to provide tax relief for Asheville citizens (economic development)
- Prioritize infrastructure investments that support children's health and safety (critical services and infrastructure)
- Proactively pursue strategies to increase the supply of workforce housing (housing opportunities)

- Assess City-owned properties for the appropriateness for redevelopment for workforce housing (action item)
- Reaffirm a stronger commitment for the safety of our children from pornography on the internet (action item)

Councilman Mumpower

- Embrace public safety as an economic development tool and make Asheville the safest City in America (critical services and infrastructure)
- Reaffirm our commitment to eliminate the open air drug market in Asheville (action item)
- Realistically match our strategic planning goals with resources and predictable policy outcomes (critical services and infrastructure)
- Ensure City government's operational effectiveness through fairly applied market based compensation packages and the proper match between policy decisions and staffing requirements (critical services and infrastructure)
- Filter our strategic planning through the probability of near-term economic downturn (critical services and infrastructure)
- Strengthen our efforts to create measurable goals, accountabilities and outcomes for all City policies and operations (critical services and infrastructure)
- Strengthen our emphasis on enforcing existing laws and regulations (action item)
- Renew water negotiations with an eye on compromise on timeline but not on Asheville's ability to manage its water resources as other cities do (action item)
- Avoid any further erosions of our fund balance in terms of percentages and dollar amounts (action item)
- Stop funding non-profit organizations with tax dollars (action item)
- Continue to push for proper funding of our district court system (action item)

Councilman Newman

- Work to enable Asheville to utilize voluntary annexation to support the healthy growth of the City (growth, development and land use and intergovernmental relations)
- Streamlining planning and development services with a focus on a more streamlined development review process so that people who are proposing development will have a higher degree of certainty of the outcome but setting very high standards for development in the City (growth, development and land use)
- Encourage and foster clean energy (natural and built environment)
- Explore opportunities to provide tax relief for Asheville citizens (economic development)
- Create workforce housing in the downtown area (housing opportunities)
- Continue to promote minority recruitment in the City organization, especially in public safety
- Make Asheville the leader for clean energy in the southeastern United States (natural and built environment)

Councilman Russell

- Explore opportunities to provide tax relief for Asheville citizens (economic development)
- Develop strategies to support diversified job growth and support small businesses (economic development)
- Streamline planning and development services (growth, development and land use)
- Proactively pursue strategies to increase the supply of workforce housing in downtown (housing opportunities)

Mr. Atkinson then asked Council to review the goals and action items above, along with the long-term goals in Council's Goals and Visions for 2007-08 (which are already being worked on), and focus on 3-5 goals that Council wants to achieve next year. Once the goals are set, then Council will need to determine what the economic financial impact is of those goals and if the City has the right amount of staff to achieve those goals.

Mr. Atkinson explained that once the goals are given to staff, they will come back with a plan that they think can address and achieve that goal. Then it will be up to Council to determine whether financially the goal can be achieved.

Arising out of Council discussion, the following 2008-09 goals were arrived at by Council: (1) Public safety (including all aspects of safety); (2) Intergovernmental relations - negotiate with County Commissioners and State delegation on the issues of water and financial fairness to the City of Asheville and voluntary annexation; (3) Make Asheville the leader for clean energy and sustainability in the southeastern United States; (4) Regional growth management; (5) Long-term debt to address infrastructure issues; and (6) Support efforts to hold the line on taxes and explore opportunities to provide tax and fee relief for Asheville citizens.

In response to Councilman Russell, City Manager Jackson said that in the future staff reports will include sections on fiscal impact and staffing impact.

It was the consensus of the majority of Council to reaffirm the Department Director's three priority areas coming out of the Department Director retreat in December, 2007.

Mayor Bellamy said that since Council members may wish to add other items to the action item list, staff will put everything in order for Council and Council will then add their additional action items, after which time Council will vote on whether or not to keep an action item. After that has happened, then staff can come back to Council with a plan for the new goals.

City Manager Jackson said that City staff will go through the Council's goals and vision for 2007-08 and delete any of the goals that have been addressed this year. After Council has agreed upon the new goals, he suggested Council affirm by resolution their priority areas and their strategic goals for the following year.

At 4:25 p.m., Mayor Bellamy adjourned the meeting.

Tersha Lyle
CITY CLERK

MAYOR

Tuesday – February 12, 2008 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; Councilman William A. Russell Jr.; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Keisha Lipe

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilwoman Jones gave the invocation.

Mayor Bellamy asked for two moments of silence for (1) individuals in Kirkwood, Missouri, who were trying to do the work of community; (2) passing of former Mayor Eugene C. Ochsenreiter Jr.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING FEBRUARY, 2008, AS "BLACK HISTORY MONTH"

Mayor Bellamy read the proclamation proclaiming February, 2008, as "Black History Month" in the City of Asheville. She presented the proclamation to Ms. Cayla Washington, Seventh grader at Cane Creek Middle School (who took on an initiative to make her classmates aware of her heritage), and Mr. Brian Fisher, Parks Center Director at Shiloh Community Center, who briefed City Council on some activities taking place during the month.

II. CONSENT AGENDA:

At the request of Councilman Mumpower, Consent Agenda Items "B", "E" and "F" were removed from the Consent Agenda for discussion and/or individual votes.

A. APPROVAL OF THE MINUTES OF THE FORMAL MEETING HELD ON JANUARY 22, 2008; AND THE CITY COUNCIL RETREAT HELD ON FEBRUARY 4-5, 2008

B. RESOLUTION OF SUPPORT AND ADMINISTRATION FOR AN APPLICATION TO THE N.C. DEPT. OF TRANSPORTATION SAFE ROUTES TO SCHOOLS DEMONSTRATION GRANT

This item was removed from the Consent Agenda for discussion and/or a separate vote.

C. RESOLUTION NO. 08-20 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A SUPPLEMENTAL UTILITY AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR WATER LINE UPGRADES FOR THE US 19/23 SMOKY PARK HIGHWAY I-40 UPGRADE PROJECT

Summary: The consideration of a resolution authorizing the Mayor to enter into a Supplemental Utility Agreement with N.C. Dept. of Transportation (NCDOT) for the project known as I-4401, and the associated budget amendment in the amount of $40,000.00.

The NCDOT is widening I-40 at Exit 44 and making improvements along US 19/23 Smoky Park Highway from Old Haywood Road to Monte Vista Road. This road project includes replacing the current 3 inch galvanized water line along Smokey Park Highway with a new 12 inch ductile iron line. This project is part of the design-build construction of I-40 from west of SR 1224 (Monte Vista Road) to I-240 in Asheville. The original resolution for this project was approved by City Council on August 21, 2007. Additional fire protection is required through this service area.

This supplemental agreement is required to enhance the fire protection in this service area by adding another fire hydrant and other water line upgrades required to provide this service. The cost of this upgrade is $40,000.00 to the original utility agreement current water line on this section of Smoky Park Highway is a three (3) inch galvanized that has numerous emergency breaks during winter months and restricts flow to a 12 inch line on Smoky Park. This project will enhance customer service by eliminating costly line breaks which cause water outages to area customers on the current line and will help loop the water system to the west region of the system. The original cost was estimated at $498,571.78. The new cost for this project is $538,571.78. Funding for this $40,000.00 is being reallocated from the Clingman Avenue enhancement project which bids were well below the budgeted estimate.

PRO: This project will eliminate a problematic 3 inch water line which will enhance customer pressures and flow; and provide fire protection to area businesses at and near Exit 44 of I-40.

CON: There are no cons to this project.

Staff recommends City Council approve a resolution authorizing the Mayor to enter into a Supplemental Utility Agreement with the NCDOT for the project known as I-4401, and the associated budget amendment in the amount of $498,571.78.

At the request of Mayor Bellamy, City Manager Jackson highlighted the project. Mayor Bellamy said that area of town is growing and this is a major upgrade in this area.

RESOLUTION BOOK NO. 31 - PAGE 72

D. ORDINANCE NO. 3581 BUDGET AMENDMENT FOR THE US 19/23 SMOKY PARK HIGHWAY I-40 UPGRADE PROJECT

Summary: See Consent Agenda Item "C" above.

ORDINANCE BOOK NO. 24 - PAGE 327

E. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT TO ACCEPT AN ALLOCATION FROM THE N.C. DEPT. OF TRANSPORTATION FOR CONSTRUCTION OF PHASE II OF THE REED CREEK GREENWAY

This item was removed from the Consent Agenda for discussion and/or a separate vote.

F. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT TO AMEND THE EXISTING AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION TO SUPPORT CONSTRUCTION COSTS OF

THE HOMINY CREEK SECTION OF THE FRENCH BROAD RIVER GREENWAY

This item was removed from the Consent Agenda for discussion and/or a separate vote.

G. RESOLUTION NO. 08-23- RESOLUTION AUTHORIZING AN EASEMENT TO PROGRESS ENERGY CAROLINAS FOR A POWER LINE ACROSS CITY-OWNED PROPERTY AT RICHMOND HILL

Summary: The consideration of a resolution approving the conveyance of an easement to Progress Energy Corporation (herein "PEC") for power transmission facilities.

PEC is requesting an easement over the City's property at Richmond Hill in order to serve the Asheville Readiness Center (National Guard) that is currently under construction there. The facilities include a power line and at least one enclosure. The line and enclosure will be installed underground. The easement area will include 10 feet on either side of the line and around the enclosure, and the City's ability to use this area will be limited, although usual park uses should not be an issue.

The proposed easement has been reviewed with the affected City departments, and no objections were noted. The Readiness Center will serve a public purpose, and is on land obtained from the City.

Pros:
- Enables the provision of utility service to a facility that will provide a public service
- Line is located underground

Cons:
- Limits City's ability to use property in easement area for some purposes.

Adoption of the resolution is recommended.

RESOLUTION BOOK NO. 31 - PAGE 75

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Vice-Mayor Davis moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Jones and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

B. RESOLUTION NO. 08-19 - RESOLUTION OF SUPPORT AND ADMINISTRATION FOR AN APPLICATION TO THE N.C. DEPT. OF TRANSPORTATION SAFE ROUTES TO SCHOOLS DEMONSTRATION GRANT

Summary: The consideration of a resolution of support and administration for an application to North Carolina Department of Transportation (NCDOT) for Safe Routes to Schools Demonstration Grant.

This resolution is an action item to formalize a City Council vote on November 27, 2007, in which City Council asked staff to pursue this grant opportunity.

Staff is assisting the Emma community in pursuing a grant for a sidewalk on North Louisiana Avenue. The City of Asheville is the lead agency on the grant application, which

requires a formal resolution of support from City Council. The application is for a demonstration grant through the NCDOT Safe Routes to School Program.

The amount of the grant application is $250,000. The grant does not require a local match. On November 27, 2007 City Council unanimously approved a motion to direct staff to prepare the application.

Staff recommends City Council approve resolution of support and administration for an application to NCDOT for Safe Routes to Schools Demonstration Grant.

Councilman Mumpower said that his comments are directed at Consent Agenda Items B, E and F He felt that North Carolina's number one responsibility to us public safety and he personally feels that their number one charge is the court system. We have one of the most dysfunctional court systems in America today. Until they get that court system in place, he will vote against anything they offer us.

Councilwoman Cape said she just returned from a conference on energy in North Carolina and the United States. It was outlined very clearly that we need a new future for energy and overwhelming 80-95% of the people voted for immediate action for a change on how we do things in the state government. A lot of it was about how we do transportation and energy of all kinds. All our problems are interconnected and looking at how we can do things differently is important to the state and they are asking for that. She is supportive of any initiative to help turn around some of the issues in the community.

Councilwoman Jones spoke in support of the Safe Route to Schools program.

Councilwoman Cape moved for the adoption of Resolution No. 08-23. This motion was seconded by Councilwoman Jones and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 31 - PAGE 71

E. RESOLUTION NO. 08-21- RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT TO ACCEPT AN ALLOCATION FROM THE N.C. DEPT. OF TRANSPORTATION FOR CONSTRUCTION OF PHASE II OF THE REED CREEK GREENWAY

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement to accept an allocation from the N.C. Dept. of Transportation (NCDOT) in the amount of up to $400,000 for construction of Phase II of the Reed Creek Greenway.

The NCDOT in the Division of Bicycle and Pedestrian Transportation has awarded the City of Asheville an allocation up to $400,000 for construction of the Reed Creek Greenway as part of the NCDOT Transportation Improvement Plan. The funds will be combined with the $36,500 budgeted in the City's FY 07/08 capital improvement budget for Reed Creek Greenway, and used to construct Phase II of the greenway along Broadway between Cauble and Magnolia Streets. This section of the greenway will be approximately 1,600 linear feet, 10-foot wide and paved with asphalt.

Phase I of the greenway between Catawba and Cauble Streets is complete, and Phase II is expected to begin in 2008 once the final easement and land acquisitions for this phase are complete. Once complete, Reed Creek Greenway will connect the Glenn's Creek Greenway adjacent to the UNC Asheville campus to downtown Asheville.

Pros:

- Supports City Council's priority of developing a greenway system in Asheville
- Leverages the City's existing capital funds allocated for construction of Reed Creek
- Keeps the project timeline of Reed Creek Greenway on track to complete construction in a timely manner

Con:

- None

The Parks and Recreation Department recommends City Council approve a resolution authorizing the City Manager to enter into an agreement to accept an allocation from the North Carolina Department of Transportation in the amount of up to $400,000 for construction of Phase II of the Reed Creek Greenway.

Councilwoman Cape moved for the adoption of Resolution No. 08-21. This motion was seconded by Councilwoman Jones and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 31 - PAGE 73

F. RESOLUTION NO. 08-22 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT TO AMEND THE EXISTING AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION TO SUPPORT CONSTRUCTION COSTS OF THE HOMINY CREEK SECTION OF THE FRENCH BROAD RIVER GREENWAY

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement to amend the existing agreement with the N.C. Dept. of Transportation (NCDOT) for an allocation of up to $300,000 to support construction cost of the Hominy Creek Section of the French Broad River Greenway.

The City of Asheville entered into an agreement with the NCDOT in the Division of Bicycle and Pedestrian Transportation in 2004 to accept an allocation of up to $300,000 for construction of the Hominy Creek section of the French Broad River Greenway as part of the NCDOT Transportation Improvement Plan. The funds will be used to construct this section of greenway on the west bank of the French Broad River beginning at Carrier Park on Amboy Rd., and extend west to Hominy Creek Park.

The 2004 agreement allowed three years for trail construction to be complete, but the project was delayed due to the delay in acquiring land. City Council allocated $590,000 in the City's Fiscal Year 2007/08 capital improvement budget to the Hominy Creek Park section of the French Broad River Greenway to be combined with the $300,000 NCDOT allocation, making it possible to complete the land acquisition and trail construction. The amended agreement allows two more years to complete the project and includes the Disadvantaged Business Enterprise federal policies as required by NCDOT.

Pros:

- Supports City Council's priority of developing a greenway system in Asheville
- Extends the City's ability to leverage existing capital funds allocated for construction of the Hominy Creek Park section of the French Broad River Greenway
- Extends the project timeline of the Hominy Creek section and to keep it on track to complete construction in a timely manner

Con:

- None

The Parks and Recreation Department recommends City Council approve a resolution authorizing the City Manager to enter into an agreement to amend the existing agreement with

the NCDOT for an allocation of up to $300,000 to support construction cost of the Hominy Creek Section of the French Broad River Greenway.

Councilwoman Cape moved for the adoption of Resolution No. 08-22. This motion was seconded by Councilwoman Jones and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 31- PAGE 74

III. PRESENTATIONS & REPORTS:

A. MUNICIPAL FACILITY SECURITY UPDATE

Risk Manager Betty Coulter briefed Council on a progress report on the City of Asheville's security enhancement initiative.

The current operating budget includes an appropriation of $85,000 to develop a plan and implement various measures aimed at enhancing the overall security of our city facilities and improving employee safety. A committee lead by the Risk Management Division and composed of staff from the Police, Fire, Human Resources, Information Technology and various other departments has been charged with undertaking this tasks.

Initial Measures:

The security improvement project began with an initial evaluation process that included the following:

- Evaluating perimeter boundaries
- Controlling the lobby or reception areas
- Controlling employee spaces
- Controlling restricted or highly sensitive areas
- Emergency action/response

Several immediate impact security measures have implemented. They are as follows:

•Police officer walk-thrus are being provided in City Hall and increased security during City Council meetings;
•Lighting at the Marjorie Street parking lot has upgraded for improved visibility and employee safety.
•Controlled access at the Marjorie Street parking lot has been extended from 5:00 p.m. to 6:00 p.m.
•Employees have received security training, "Protecting Yourself against Workplace Violence."

Recreation Center Measures:

Additional measures involving City recreational facilities have also been implemented as well. Recreational and police staffing have been added at the Reid, Montford, Stephens Lee and Shiloh centers. The procurement of additional security cameras for recreational facilities is expected to be completed by February 25, 2008, with installation of these cameras planned for April 2008.

Long Term Measures:

The security committee is currently developing a comprehensive proposal and spending plan for the implementation of long term security measures. This plan will likely include major

physical improvements and the enhanced use of technology at City facilities to promote controlled access and emergency response. These measures may include installation additional card access readers; construction of additional partitions and walls; installation of remote entry devices; increased usage and installation of panic alarms buttons have been earmarked. The committee is expected to have a comprehensive recommendation for technology and implementation plan by March 1, 2008.

Additional work place violence training programs planned for spring and fall 2008.

An emergency action and response plan addressing security issues is expected to be completed by October 2008.

Staff requests City Council review this report and provide further direction to staff as needed.

Ms. Coulter responded to various questions/comments from Council, some being, but are not limited to: any additional security plan for City Council meetings; what measures are in place now at recreation centers and what is the next step; and is there any discussion about using technology similar to the Buncombe County Courthouse.

Mayor Bellamy asked Ms. Coulter to keep City Council updated on this initiative.

B. REPORT ON WATER SUPPLY FLUORIDATION

Mayor Bellamy said that last fall she was approached by several people who requested this item be placed on Council's agenda. She explained Council's process and referred them to Water Resources Director David Hanks. She also met with them twice. They still asked to be placed on Council's agenda so that is why this topic is being heard by Council.

Water Resources Director David Hanks said that the City of Asheville has added fluoride to its drinking water since 1965. Fluoride was added to the drinking water through a voter referendum on May 11, 1965, and upheld by a subsequent voter referendum on September 12, 1967. The City currently uses the chemical Hydrofluorosilicic Acid to maintain its residual fluoride level. The City Attorney has reviewed the previous voter referendums and a positive voter referendum would be required to remove fluoride from the Asheville water system.

The Center for Decease Control (CDC) and the Environmental protection Agency (EPA) have a standard for residual fluoride in drinking water at 1.0 parts per million (ppm) and shall not exceed 4.0 ppm. The City's Water Resources Department monitors the fluoride residual and has never exceeded the Maximum Contaminant Level for fluoride. The goal is to have as constant as possible a 1.0 ppm fluoride residual. Typically the fluoride residual is maintained in the 0.9 – 1.1 range. Studies by the CDC and EPA have shown that low fluoride level (below 4.0 ppm) have a positive affect on preventing tooth decay and levels above 4.0 ppm have a negative affect on teeth causing molting of teeth and bone and joint problems. All water systems which fluoridate their water supplies must monitor fluoride residuals and report these levels to the State, such as the North Carolina Department of Environment and Natural Resources monthly. Fluoride is naturally found in the ground and in most well systems.

Pro: Approximately 67 percent of Americans on public water systems receive optimally fluoridated water. The CDC sited water fluoridation as one of the 10 great health achievements of the 20th century. The first municipal drinking water system to add fluoride was Grand Rapids, Michigan, on January 25, 1945. The United States Task Force on Community Preventive Services strongly recommended community water fluoridation for reducing tooth decay. The annual cost to add Hydrofluorosilicic Acid to the Asheville water supply is approximately $16,000.00. The CDC reports have shown no link to cancer or other diseases when the optimal

levels of fluoridation have been used. Fluoridation is used by dentists, in tooth paste and many bottled waters and even water bottled for children who are not on fluoridated water systems.

Con: For every positive report on the benefits of water fluoridation there are an equal number of reports stating the health hazards associated with fluoridating public water supplies. The over 4.0 ppm level causing health problems has been well documented. Some other reports and articles indicate that any level of fluoridation may be harmful. Books, such as "the fluoride deception" by Christopher Bryson have been written on fluoride and health problems associated with the use of fluoride.

Per the City Attorney the City is obligated to fluoridate the drinking water per State and EPA established standards unless reversed by a public voter referendum.

The following individuals urged City Council to eliminate fluoride to the City's water supply system for various reasons, some being, but are not limited to: the product being added to the water supply is contaminated with arsenic, lead, cadmium and other toxins; the product is not proven to be effective for preventing dental caries, etc.; the product is not proven to be safe for all levels of consumption and for all consumers; the product used to treat Asheville's water supply is derived from the sludge scrubbed from the smoke-stacks of the phosphate fertilizer industrial plants; studies that have confirmed the safety of public water fluoridation are seriously out of date; current studies shed new light on fluoride's toxicity; the American Dental Association recommended that infants who drink formula have their formula mixed with non-fluoridated water because the dosage of fluoridated water is way too much; it has been proven that fluoride is only effective topically and not systemically; and the CDC in a paper in 2001 showed that you would have to increase water concentrations 10 fold to make a significant difference to decrease tooth decay:

Dr. John Wilson, specializing in environmental medicine (presented Council with a DVD entitled "Fluoride in Our Water" with James Biddle, MD; Matt Young, DDS; and John Wilson, MD)
Dr. James Biddle, physician that practices internal medicine
Dr. Matthew Young, dentist in Hendersonville, N.C.

The following individuals urged City Council to continue their practice of adding fluoride to the City's water supply system for various reasons, some being, but are not limited to: fluoridation is based on sound science and support and vote of our citizens; all the massive body of all the scientific research and study on fluoride it has been proven to be safe and effective; over 60 years it has been more thoroughly studied than any other public health measure; it is rated one of the ten greatest public health achievements of the 20th century; opposition to fluoridation is reporting from selective data to support their prospective; tooth decay and dental disease is a big problem across the country and is the most common chronic childhood disease; if you remove fluoridation from the water system, the demographics most damaged would be in the lower socio-economic groups, in families with lower levels of parental education, in social and ethic minorities and groups who are disadvantaged or have special needs, in those who do not seek regular dental care and those without insurance or access to care; American children every year miss more than 51 million hours of school because of dental related illness; we must not minimize the short and long-term effects of dental decay; we must be proactive through prevention and water fluoridation is a big key in this; fluoride is not a drug but is found naturally in all water and in many foods; fluoride has been called "nature's cavity fighter" or the natural way to improve oral health; fluoridation is merely adjusting the existing fluoride levels up to an optical level sufficient to prevent tooth decay; water fluoridation has been and still is the most effective, cost effective and efficient means for the prevention of tooth decay; fluoridation works through systemically and topical approaches; based on present scientific knowledge, there is no basis or justification to change the City's present water fluoridation policy; and national health organizations, dental and medical research groups look at this issue constantly and if there are

any recommendation changes, dentists would be the first group before Council to make those recommendations:

Dr. Bill Chambers, Pediatric Dental Specialist (presented Council with literature regarding fluoridation)
Dr. Dennis Campbell, Pediatric Dentist
Dr. Steve Swearingen, Medical Director of the Buncombe County Health Center
Dr. Susan Mims, Medical Director for Mission Children's Hospital
Dr. Olson Huff, Pediatric Dentist
Ms. Allison Jordan, Executive Director of Children First
Dr. Jack Teague, Dentist
Dr. Michael Justice, Vice-President of the North Carolina Dental Society
Dr. Joe Dunn, representing Coalition of Business Men and Concerned Citizens
Dr. Ryan Haldeman, President of the Buncombe County Dental Society

Councilwoman Cape felt that the people had a choice through a referendum over 43 years ago and because people want a choice regarding their health, she moved to place this issue on the next ballot for a referendum. This motion died for lack of a second.

Councilman Newman moved to support the City's policy of adding fluoride to the City's water system. This motion was seconded by Vice-Mayor Davis.

Throughout Council discussion, Mr. Hanks and Dr. Campbell responded to various questions/comments from Council, some being, but are not limited to: are there measurable toxins in the fluoride mixture we use; are there other forms of fluoride added to our water; are there different sources for fluoride; is fluoride an abundant source; does Asheville's fluoride come from sludge scrubbed from smoke-stacks; why have other cities decided to take the fluoride out of the water supply; are there any studies showing a difference of dental issues from well water vs. city water; out of the three identified sources for fluoride, which is the most natural or the most cost effective one; and how is fluoride mined.

In response to Councilwoman Cape, Mr. Hanks said that he did send a request to the manufacturer and they showed us where they met the standards for the National Sanitation Foundation Standard 60. All levels of ingredients were well below what the standard requires. We do add chemicals to the water to kill bacteria. He said we test our water repeatedly and send it off for testing and we have some of the best drinking water you will find anywhere. He feels confident that what we are putting out there is a good product for all of our customers.

In response to Councilman Mumpower, Dr. Swearingen said that he has not heard of any incidents identified with fluoride toxicity in recent years in our community.

The motion made by Councilman Newman and seconded by Vice-Mayor Davis carried on a 6-1 vote, with Councilwoman Cape voting "no."

At the request of Councilwoman Jones, and by the consensus of the majority of Council, Mr. Hanks was directed to look into having an adequate supply of fluoride for the City's water system long-term and report back to Council.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE REGARDING REGULATING STANDARDS FOR LARGE RETAIL STRUCTURE

ORDINANCE NO. 3582 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE REGARDING REGULATING STANDARDS FOR LARGE RETAIL STRUCTURE

Mayor Bellamy opened the public hearing at 6:50 p.m.

Interim Planning & Development Director Shannon Tuch said that this is the consideration of an ordinance to amend the Unified Development Ordinance (UDO) regarding regulating standards for large retail structures. This public hearing was advertised on February 1 and 8, 2008.

As the result of several recent development proposals, City staff and the Asheville City Council have become aware of some allowances afforded large retailers when classified as multi-tenant developments.

Council recently requested an amendment to the standards for large retail structures that would restrict large retailers from exceeding the standards for single tenants by including one or more comparatively diminutive tenants in order to gain additional square footage for the primary retailer. As with many amendments there are varying degrees of restrictiveness that may be considered.

The least restrictive and most basic amendment would be to modify the definition of multi-tenant development to state that separate tenants must have their own independently occupied space with individual entrances for public access that opens onto a shared ancillary facility, such as a parking lot or structure. Currently, the definition only requires that they produce separate "activities" and that they share a common parking field or pedestrian mall area. This would not preclude the ability for a small area internal to a larger store to be leased; it would simply limit their ability to be classified as a multi-tenant.

On the other end of the spectrum, a much more restrictive option would be to limit the size of any individual retailer regardless of their classification as a single tenant or multi-tenant. Only one zoning district currently restricts the size of a single tenant - Highway Business limits single tenants to 75,000 square feet (increased up to 112,500 s.f. if complies with big box retail checklist). This restriction could be extended to a multi-tenant development to require that no single retailer exceed 75,000 square feet. This would likely preclude some large national chain retailers from locating in the Highway Business district. Highway Business is also the only zoning district that restricts the size of multi-tenant developments as well at 200,000 square feet (increased up to 300,000 square feet if development complies with big box retail check list).

Another more moderate option would be to limit the primary retailer to no more than 75% of the total gross square footage. This would allow for the primary retailer to exceed the designated square footage limitations as long as opportunities for other small or mid-sized retailers are provided. Again, this would not preclude spaces less than 25% of the total square footage being leased, it would simply limit their ability to be classified as a multi-tenant and restrict the development size to that of a single retailer.

The Planning and Zoning Commission had previously considered a more restrictive proposal that included square footage restrictions in the River district and recommended a continuance to afford staff additional time to meet with interested stakeholders in the community to better ensure that a variety of city goals would be considered. Staff attended the regularly occurring CIBO meeting the following month where a short presentation was made with an open invitation for additional feedback along with the opportunity to arrange for individual meetings. Subsequently, staff did meet with representatives of the retail grocery industry to discuss the potential impacts on recent development trends. The meeting was productive and resulted in a compromise that appeared to meet a variety of goals and address a number concerns. Given the increase in the average store size over the years, the 75,000 square foot limitation for a single

tenant was challenging to the industry where the average store now exceeded 75,000 square feet. Raising the threshold to 100,000 square feet would meet their current needs with some room for additional forecasted growth and would allow a single tenant retailer to proceed without going through a public hearing process as a Conditional Use Permit. This change would not only accommodate the recent growth of the average store size but would also bring some consistency to the City's development standards where any development, regardless of zoning, that exceeds 100,000 square feet is reviewed as a Level III Conditional Use Permit. Raising this threshold makes development in the Highway Business zoning district more consistent with other Level III Conditional Use Permits. Staff is also proposing to raise the threshold for which a single tenant would need to meet the standards of the "Big Box Retail Checklist" (Appendix 7F) to 100,000 square feet feeling that a variety of the features elicited by the checklist now come standard (building materials, fenestration, etc.) or are now required through recent changes to our landscape standards (pedestrian connections, larger tree islands, etc.).

Given the existing restrictions in the Highway Business zoning district, the stated goals of City adopted plans, and the interest in supporting the economic vitality of the local grocery and other retailers, staff is proposing:

- Limiting the primary retailer to no more than 75% of the total development's square footage;
- Revising the definition of multi-tenant development for clarity; and
- Raising the threshold for a single tenant to 100,000 square feet.

Staff feels that this combination of changes will meet certain goals while still providing opportunities for developers of large retail centers.

This draft has been circulated to CIBO, CAN, and CREIA along with other interested parties.

Staff recommends City Council approve an ordinance amending Chapter 7 of the Code of Ordinances of the City of Asheville modifying standards for Large Retail Structures.

Mayor Bellamy closed the public hearing at 6:57 p.m.

Ms. Tuch responded to various questions from Councilman Mumpower and Newman regarding the threshold.

After Ms. Tuch explained why this amendment is being brought forward, Councilman Mumpower felt that staff has done their best to take policy guidance from Council and turn it into a functional modification of the UDO. However, he questioned Council's continued effort to invest itself in regulation and control through the UDO. We are making it increasingly complex thus making it necessary to increase staffing requirements.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Newman moved for the adoption of Ordinance No. 3582. This motion was seconded by Vice-Mayor Davis and carried on a 4-2 vote, with Councilman Mumpower and Councilman Russell voting "no."

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Closed Session

Mayor Bellamy said that during Council's break, Council would conduct a closed session.

At 7:05 p.m., Councilman Mumpower moved to go into closed session for the following reasons: (1) to consider the qualifications, competence, performance, character, fitness, conditions of employment of an individual public officer or employee. The statutory authorization is contained in G.S. 143-318.11 (a) (3); and (2) to prevent the disclosure of information that is confidential pursuant to G.S. 160A-168, the Personnel Privacy Act. The statutory authorization is contained in G.S. 143-318.11 (a) (2). This motion was seconded by Councilman Newman and carried unanimously.

At 7:25 p.m., Councilwoman Jones moved to come out of closed session. This motion was seconded by Councilman Newman and carried unanimously.

B. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE MODIFYING STANDARDS TO ACCOMMODATE EMERGENCY WIRELESS COMMUNICATIONS

ORDINANCE NO. 3583 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE MODIFYING STANDARDS TO ACCOMMODATE EMERGENCY WIRELESS COMMUNICATIONS

Mayor Bellamy opened the public hearing at 7:25 p.m.

Interim Planning & Development Director Shannon Tuch said that this is the consideration of an ordinance to amend the Unified Development Ordinance (UDO) modifying standards to accommodate emergency wireless communications. This public hearing was advertised on February 1 and 8, 2008.

As the development trends continue towards tall buildings it has become increasingly important to ensure that buildings and structures do not interfere with the City's communication network. Development standards must be modified to accommodate the needs of the City's communications network, to eliminate any interference a development would create or otherwise accommodate the needs of the City's communication network. Additionally, specifications must be developed for a Radio Signal Booster System and other related technology which will correct for a reduction in the radio signal to a level below that required to assure the 95% area coverage reliability needed for public safety communications.

The City of Asheville operates a 7 channel trunked, simulcast public safety radio system in the 800 megahertz (MHz) band. The system was designed to provide clear, intelligible, in-building communication from portable radios with public safety speaker microphones mounted at shoulder height with an area coverage reliability of better than 95%. Erection of new buildings affects the radio system coverage; the effect on radio coverage is dependent on location (distance from the radio transmitter and receiver and other buildings in the vicinity), height, projected frontal area (building mass), and construction materials. If the City's analysis indicates that there may be a reduction in the radio system coverage to a level below that considered acceptable for reliable public safety communications, corrective action will be required to assure radio system coverage reliability is retained. At the minimum, a Radio Signal Booster System will be required but in some situations, it may be necessary to install a satellite receiver system or a full transmit and receive site.

Obstructions to communications typically occur with buildings that have uniform mass and heights over 60-feet. In order to address these concerns, the Unified Development Ordinance must be amended to require certain features for buildings that meet these criteria. To help direct designers and developers through the permitting process, staff is proposing to add some basic requirements to Article XI – Development and Design Standards. Detailed specifications must also be developed for the related technology and a draft of these specifications are prepared but will require some minor modifications before incorporation into the City's standards and specifications manual.

This draft has been circulated to CIBO, CAN, and CREIA along with other interested parties.

Pros:

- Ensures public safety and welfare.
- Provides standards to be incorporated into the original design of the building avoiding the need for retro-fits.

Con:

- May add a nominal cost to building development.

Staff recommends City Council approve an ordinance amending Chapter 7 of the Code of Ordinances of the City of Asheville modifying standards to accommodate emergency wireless communications. Staff also recommends the adoption of the RSBS specifications to be incorporated into the Standards and Specifications Manual.

Mayor Bellamy closed the public hearing at 7:34 p.m.

Throughout discussion, Ms. Tuch, Director of Building Safety Robert Griffin and Information Technologies Director Jonathan Feldman responded to various questions/comments from Council, some being, but are not limited to: how do other cities handle this problem; are there problems with existing buildings and if so, which ones; is the 1% additional cost to developers a pretty reliable figure; how will the projects be identified and will there be objective criteria applied; are the developers only providing the cabling, conduit and easement with the City installing the equipment to add the signal; did staff consider applying these standards to a particular district; what percentage of our undeveloped land within the City of Asheville is covered by our current system; what are the strategic areas in the City where these standards would apply; and did staff discuss any incentives for new construction or existing buildings.

Councilman Mumpower felt we are transferring our communication problem to other people. He felt that 1% is a significant amount of money and he is not convinced that we can apply objective criteria. Again, he felt that communication is the City's responsibility and we should seek to maximize the system at our own expense.

Councilwoman Cape believed public safety is one of our highest mandates. If we are having difficulty reaching the interior of a building with the proper signal, the risk management that we have to be careful about is how liable are we if we don't try to work together. Working with developers represents a technological approach to our safety management.

In response to Vice-Mayor Davis, Ms. Tuch said that the City is trying to minimize the costs upfront, because if we had to retrofit a building, it would be very expensive.

Mr. Feldman explained that we are not asking people to improve coverage for the City, but asking people who are constructing their buildings to make the people in their building safe.

In response to Mayor Bellamy, Ms. Tuch said that this will not be applied to single-family residential buildings, as long as they are not primarily made of metal or concrete or contain below grade storage or parking areas. Also, buildings constructed prior to adoption of this ordinance shall not be required to comply with the public safety radio coverage provisions unless they undergo renovation, restoration or significant modification to the original structure.

Mayor Bellamy felt an amendment to the proposed ordinance is necessary in order to clarify when an existing structure would need to come into compliance. Ms. Tuch suggested the following language "Also, buildings constructed prior to adoption of this ordinance shall not be

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required to comply ... unless they undergo renovation, restoration or significant modification (if it exceeds 50% of the value of the building) to the original structure."

In response to Councilman Mumpower regarding offering incentives, City Attorney Oast said that we have density bonuses that we offer for different kind of projects. To offer incentives for this, he believed, would require special legislation.

City Attorney Oast responded to Councilwoman Cape when she asked for clarification that we in fact could not offer incentives for this use.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Cape moved for the adoption of Ordinance No. 3583, with the amendment suggested by Mayor Bellamy that significant modification is more than 50% of the value of the building. This motion was seconded by Councilwoman Jones and carried on a 6-1 vote, with Councilman Mumpower voting "no."

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C. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF PROPERTY LOCATED AT 86 AND 88 RICHMOND HILL DRIVE FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT TO RESORT DISTRICT/CONDITIONAL ZONING FOR THE USE AS A SHORT-TERM RENTAL

ORDINANCE NO. 3584- ORDINANCE TO CONDITIONALLY ZONE PROPERTY LOCATED AT 86 AND 88 RICHMOND HILL DRIVE FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT TO RESORT DISTRICT/CONDITIONAL ZONING FOR THE USE AS A SHORT-TERM RENTAL

Mayor Bellamy opened the public hearing at 8:02 p.m.

Urban Planner Nathan Pennington said that this is the consideration of an ordinance to conditionally zone property located at 86 and 88 Richmond Hill Drive from RM-6 Residential Multi-Family Low Density District to Resort District/Conditional Zoning for the use as a short-term rental. This public hearing was advertised on February 1 and 8, 2008.

Mr. Pennington said that the applicant seeks the conditional zoning of two lots consisting of .59 acres currently zoned RM-6 to Resort/Conditional Zoning for the establishment of vacation rentals of less than thirty (30) days in two existing single-family residences. The subject property is located at 86 & 88 Richmond Hill Drive within the City's corporate limits.

Lodging facilities are a permitted use in Resort zoning district. This district was created to provide an area for the development of resort oriented uses and conference/retreat facilities. This district will provide areas for the development and expansion of facilities which serve primarily tourists and vacationers. Development standards are established to protect adjacent land uses from the adverse impacts of resort development. The Resort zoning district requires a minimum lot size of five (5) acres. Therefore the applicant would be required to recombine the subject parcels with the Richmond Hill Inn parent parcel in order to satisfy the minimum lot size requirement if the rezoning request is approved.

The site slopes gently towards Richmond Hill Road from the rear of the property and the majority of the lots are wooded and landscaped. Twenty (20) percent of the site has been designated as open space with the majority of this space located to the rear of the property. In

addition, the property requires a 20-foot wide Class "A" buffer along the side and rear perimeter of both lots as indicated on the site plan. Due to the location of the existing building footprints, the applicant will be unable to fully accommodate the required buffer width on the eastern side of 86 and the western side of 88 Richmond Hill Drive. Therefore, the applicant is seeking a modification request by City Council to reduce the required width in these areas and plant additional required vegetation elsewhere onsite.

All parking will be limited to onsite parking in the two existing driveways, and no on street parking will be permitted.

The subject property is bounded to the north by the Richmond Hill Inn and separated by Richmond Hill Drive zoned Resort, to the east and west by vacant land zoned RM-6 and to the south by a single-family residence zoned RM-6.

At their November 5, 2007, meeting, the Technical Review Committee (TRC) approved the project with the conditions listed in their staff report dated November 5, 2007.

At their January 2, 2008, meeting, the Planning and Zoning Commission unanimously approved the project with the conditions.

At the time of this writing, staff has received no communications from neighbors regarding this project.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in Section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. That the proposed use or development of the land will not materially endanger the public health or safety.
   The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements once the conditions enumerated by the TRC are met. The project must meet the technical standards set forth in the UDO, the City Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.

2. That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.
   The proposed use is compatible with the surrounding natural features and topography. No additional development is proposed for the site. The property is well buffered from the single-family residence to the south and a 20-foot wide Class "B" buffer will be installed along the rear of the property that will further buffer the residence from the proposed vacation rental use.

3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.
   Staff does not expect that the proposed use would have anything more than a minimal impact on neighboring property values.

4. That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.
   The requested change in zoning from RM-6 to Resort would allow the two (2) existing units to be operated as vacation rental units and no additional units are proposed to be

constructed. Therefore, the existing density and the proximity to the Richmond Hill Inn would be in character and harmony of the neighborhood in which it is located.

5. That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.
The application of adaptive reuse supports a goal and objective described in The Asheville City Development Plan 2025.

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.
The proposed development is located near transportation facilities and other utilities appear adequate. The initial technical review by other technical agencies and utility providers has not revealed any problems for serving the use.

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.
The proposed project has been reviewed by the City's traffic engineer and is not expected to cause undue traffic congestion or create a traffic hazard.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:

- Provides another opportunity to implement the adaptive reuse of existing structures.

Cons:

- The rezoning of the property from RM-6 to Resort might be perceived as a further encroachment into an established residential neighborhood.

Staff recommends approval of the proposed project and Conditional Zoning request subject to the standard conditions as follows: (1) The project shall comply with all conditions outlined in the TRC staff report dated November 5, 2007; (2) The applicant must make application for lot recombination within sixty (60) days of zoning permit issuance; (3) Parking is limited to onsite spaces, and no on street parking is permitted; (4) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (5) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans must gain approval through the Planning and Development Department; and (6) This project will undergo final review by the TRC prior to issuance of any required permits.

Mayor Bellamy closed the public hearing at 8:03 p.m.

In response to Councilwoman Cape, Interim Planning & Development Director Shannon Tuch explained that the landscape drawings may look like the buffer is against the house, but when they do a field visit, they adjust that and shift the plantings to keep them away from homes and such.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

As Councilman Mumpower finds that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation, he moved for the adoption of Ordinance No. 3584, to conditionally zone property located at 86 and 88 Richmond Hill Drive from RM-6 Residential Multi-Family Low Density District to Resort District/Conditional Zoning for

the use as a short-term rental, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report dated November 5, 2007; (2) The applicant must make application for lot recombination within sixty (60) days of zoning permit issuance; (3) Parking is limited to onsite spaces, and no on street parking is permitted, (4) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (5) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans must gain approval through the Planning and Development Department; and (6) This project will undergo final review by the TRC prior to issuance of any required permits. This motion was seconded by Councilman Russell and carried unanimously.

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D. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR THE PROJECT KNOWN AS DEPOT CROSSINGS AT SWEETEN CREEK ROAD, LOCATED AT 4 ROBERTS ROAD, FOR A PROPOSED HOTEL AND RESTAURANT

ORDINANCE NO. 3585- ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR THE PROJECT KNOWN AS DEPOT CROSSINGS AT SWEETEN CREEK ROAD, LOCATED AT 4 ROBERTS ROAD, FOR A PROPOSED HOTEL AND RESTAURANT

City Clerk Lipe administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 8:07 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Julia Cogburn submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Cogburn said that this is the consideration of the issuance of a conditional use permit for the project known as Depot Crossings at Sweeten Creek Road, located at 4 Roberts Road, for a proposed hotel and restaurant.

The project site is located at the corner of Sweeten Creek Road and Roberts Road just south of the intersection of Sweeten Creek and I-40. (Attachments to City Exhibit 3 - Aerial Map and Site Plan) The site for the new hotel/café is 1.04 acres. When added to the acreage of the two adjoining lots in the same ownership, the acreage total is 6.32 acres. The new site proposal is being reviewed as a Level III project because it is a development within 1500 feet of previous development that occurred with the past three years, presented by the same developer. This same property was previously approved as part of a coordinated Level III (CUP) approval but for

an office building on this site. The expansions to the recreational facility and existing office building that were proposed as part of the coordinated development have been completed.

The developer now proposes a new Level III project - the change being to place a hotel and café on the 1.04 acre site. The hotel is proposed for 69 rooms. The café will seat 50 persons. The proposed building is four (4) stories – 39 feet in height. The hotel is proposed to be 32,262 square feet. The café is proposed at 1,527 square feet. The parking has been evaluated for all three lots since there is shared parking for the various uses. Standards for the landscaping and open space for the three separate lots have been evaluated under the rules in place at the time each parcel was developed.

The City's Technical Review Committee (TRC) met on December 3, 2007, to review this development proposal. At this meeting the TRC voted to approve the project with the conditions outlined their TRC report dated December 3, 2007.

On January 2, 2008, the Asheville Planning and Zoning Commission reviewed the permit application and voted unanimously to recommend approval to the Asheville City Council.

City Council must take formal action on this matter and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case.

1. That the proposed use or development of the land will not materially endanger the public health or safety.
   The proposed use has been reviewed by City staff and appears to meet all public health and safety related requirements once the conditions enumerated by the TRC are met. The project must meet the technical standards set forth in the Unified Development Ordinance (UDO), the City Standards and Specifications Manual, and the North Carolina Building Code, and other applicable laws and standards that protect the public health and safety.

2. That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.
   The applicant has followed all applicable regulations in the location of the bottomless culvert for Sweeten Creek.

3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.
   The project consists of developing a hotel and café which is appropriate for property immediately abutting interstate highway.

4. That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.
   The proposed development is surrounded by major highways (I-40, US 25-A), railroad tracks, an office complex, and a major equipment sales and service operation. The scale and character of the development is in keeping with all that surrounds it.

5. That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.
   This development supports the Asheville City Development Plan 2025 in that it implements the strategy of permitting appropriate commercial developments in locations where there exist adequate public facilities.

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities. Development on the site will require final technical approval from all applicable departments including Water Resources, Metropolitan Sewerage District, Engineering, Fire and Building Safety. The conceptual plans for the development have been reviewed by the City's TRC, which found that adequate services and facilities are available for the proposed development.

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard. The subject site is located adjacent to an interstate interchange and on a major artery in the community. Traffic associated with the development will have ample resources for access to the site. All other services are readily available to the development.

Pros

- The proposed hotel/café site is very appropriate for location at a major interstate interchange.
- The project supports the City's comprehensive plan as indicated in this report and is adequately served by needed infrastructure.
- The developer has utilized shared parking to reduce the number of parking spaces provided.

Cons

- The project site has difficult topographic challenges. Retaining walls will have to meet all applicable regulations.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable and recommends approve of the conditional use permit with the conditions outlined in the TRC report dated December 3, 2007.

Mayor Bellamy closed the public hearing at 8:10 p.m.

As Councilman Mumpower finds that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation, he moved for the adoption of Ordinance No. 3585, to approve the Conditional Use Permit adopting the proposed master plan for the Depot Crossings at Sweeten Creek development subject to the conditions recommended by City staff and the standard conditions as follows: (1) The project shall comply with all conditions outlined in the TRC staff report dated December 3, 2007; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; and (5) This project will undergo final review by the TRC prior to issuance of any required permits. This motion was seconded by Councilman Russell and carried unanimously.

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V. UNFINISHED BUSINESS:

VI. NEW BUSINESS:

A. PROPOSAL TO CREATE A CITIZENS COMMISSION ON LOCAL ELECTIONS

Councilman Newman said that there are a number of suggestions that have been discussed by City Council and within the community about ways to improve or strengthen our local elections in Asheville. Even though these issues are not the top priority on the community's list, when the issues do come up, it is very intense. He would like to propose the formation of a Citizens Commission on Local Elections in Asheville to take a look at these questions. The commission would be charged with analyzing the pros and cons of these issues, solicit input from the community, and develop recommendations for City Council and, where authorizing legislation may be necessary, our legislative delegation.

He suggested the commission be charged with considering the following questions:

1. Should Asheville City Council adopt some form of public financing or other campaign finance reform measures for municipal elections?

2. Should Asheville City Council seats be elected all at-large or include districts?

3. What would be the pros and cons of using Instant Runoff Voting in Asheville elections?

4. How should City Council make appointments to fill vacancies on the Council (which typically occur when a sitting member of Council is elected Mayor)?

5. Are there other reforms in our local elections process that should be considered?

If Council believes such a citizens commission would be of benefit, he recommended Council appoint a 7-9 member citizens group to consider these questions, with the goal of reporting back to Council by the end of the year.

In response to Councilwoman Jones, Councilman Newman envisioned the commission soliciting public input, developing recommendations and then presenting them to Council. After that, the commission would be dissolved, unless there are additional needs identified.

Councilwoman Cape has not heard a lot of conversation from the community on these issues and appreciated Councilman Newman for bringing this to Council's attention. However, she was concerned if a 7-9 Commission would still meet the community need to be involved in this process. She wondered if there was a process by which we can expand the community conversation first, perhaps through a forum process, to see if the community wants Council to appoint a commission.

Councilman Russell was concerned that City Council may not be the right body to address some of these questions, since Buncombe County handles the election process. Along those same lines, City Council is empowered to make decisions on how we will fill vacant Council seats, not through a recommendation of another body like a commission. He felt we may need to look at this in pieces.

Councilman Mumpower felt this initiative is an attempt to fix something that is not broken. He felt there are a lot of opinions, but the problems are few and far between. He felt this is an unnecessary initiative.

Vice-Mayor Davis felt that the filling of a vacant Council seat is an important issue, but City Council alone is appointed to handle that. He was also concerned that if a commission appointed and gives Council recommendations, there may be some expectation by the Committee members that Council should accept the recommendations and take action on them. He could not support appointing a commission at this time.

Councilwoman Jones has heard conversation about at-large districts and how a vacancy on Council should be filled. She felt this is the type of issue that Council should discuss in a formal meeting forum.

Councilwoman Cape moved to set a public hearing on March 11, 2008, on the various questions outlined above by Councilman Newman and whether the community wants Council to appoint a commission to address these issues. This motion was seconded by Councilman Newman.

Mr. Jay Quinn explained his preferences and encouraged Council to move forward with appointing a commission.

Mr. Mike Fryar expressed to Council his choices, but felt that any issue should be put on the ballot for a referendum.

Mr. Paul Van Heeten and supported a citizens committee on local elections.

Mr. David Lack felt the issues should be placed on a ballot and even if there is poor turnout, there will be more than 7-9 people to give their recommendation. .

Mayor Bellamy asked City Clerk Lipe to provide City Council with the minutes of the meeting where Council discussed and chose not to make a decision on the 4th Council seat.

The motion made by Councilwoman Cape and seconded by Councilman Newman failed on a 3-4 vote, with Councilwoman Cape, Councilwoman Jones and Councilman Newman voting "yes" and Mayor Bellamy, Vice-Mayor Davis, Councilman Mumpower and Councilman Russell voting "no."

B. RESOLUTION NO. 08-24- RESOLUTION ESTABLISHING THE CITY OF ASHEVILLE'S FEDERAL PRIORITIES AND FEDERAL FUNDING REQUESTS FOR FISCAL YEAR 2009

Economic Development Director Sam Powers said that this is the consideration of a resolution establishing the City of Asheville's federal priorities and federal funding requests for fiscal year 2009.

The purpose of this agenda item is to review and request update by City Council of prioritization of federal legislative initiatives and federal funding requests for the second session 110th Congress.

On February 20, 2007, City Council adopted its current list of priorities for federal legislative initiatives and federal funding requests.

The current adopted list of federal legislative initiatives is as follows:

1. City Council supports as top priority legislative action to remedy changes to the funding of Asheville Transit system negatively affecting the system.
2. City Council supports national and state legislation/resources to address illegal immigration issues at the local level, specifically in respect to criminal behavior and the employment of illegal aliens.
3. City Council supports federal legislation securing the necessary funds to continue the North Carolina Health Choices Initiative to insure our children in North Carolina by supporting Senate Bill S.3913 (Keep Children Covered Act of 2006).
4. City Council expresses appreciation for support in raising the federal minimum wage.

5. City Council supports legislation to restore funding to HOPE 6, as well as legislation that will allow retooling of public housing.
6. City Council supports legislation that will address the significant crisis in Crack cocaine in our cities.
7. City Council supports federal legislation that will encourage development of sustainable buildings and energy efficient public buildings.

The current project that City Council has voted to request federal funding is:

1. Reid Center for the Creative Arts Renovation - Amount requested is $4 to $6 Million.

In addition to the current adopted list, staff has identified the following projects as candidates to request federal funding assistance.

1. Regional Public Safety Training Facility (requested by Public Safety Committee) - Amount requested is $4 Million.
2. Transit System Replacement Bus Purchase - Amount requested is $7,875,000 over three years ($2,625,000/year).
3. Traffic Signal Preemption - Amount requested is $495,000.
4. Energy Conservation Retrofit for City Buildings - Amount requested is $749,200.

One item not on the list is the opportunity to seek support for conversion of fleet vehicles to CNG.

Tonight the Council has an opportunity to:

- identify potential new initiatives;
- select and prioritize federal initiatives and federal funding requests for inclusion in a federal priorities agenda; and
- consider how to communicate with our legislative delegation.

Staff recommends that City Council approve a resolution establishing the City of Asheville's federal priorities and federal funding requests for Fiscal Year 2009.

Councilwoman Cape asked why Council is just now seeing this item with such a short period for deliberation. She requested that Council have the opportunity, in the future, to have more time with this funding request. She then requested that this year we delete the appreciation expressed last year for their support in raising the federal minimum wage. She suggested the Reid Center have an option to rebuild or renovate. She also requested the following initiatives be added in recognition of the US Mayor's Climate Protection Agreement that the City signed in 2005, which were (1) to urge the state and federal government to enact policies and programs to meet or beat the greenhouse gas emission reduction target for the US which is 7% from 1990 levels by 2012; and (2) to urge US Congress to pass the bi-partisan greenhouse gas reduction legislation which would establish a national emission trading system. And, she requested a bookmark for a proposal for Council to lend support for the Asheville HUB Climate Education Center Initiative that we will have on our agenda next week.

Mayor Bellamy explained that the primary reason that this issue is on Council's agenda tonight is because of the grant deadline to our legislators, which is February 19. Regarding other initiatives, she asked Council to send their requests to City Clerk Lipe and their requests will be discussed on February 26, 2008, prior to an annual National League of Cities Conference in Washington, D.C. At the conference, cities arrange times to meet with their legislators and staff to urge support for their initiatives.

Councilman Mumpower explained why he felt we should not participate in any of these things from the federal government.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Newman moved to adopt Resolution No. 08-24 to support the following projects and to request federal funding assistance as outlined above by Mr. Powers: (1) the Reid Center for the Creative Arts Renovation (with the flexibility of renovation or rebuilding); (2) Regional Public Safety Training Facility; (3) Transit System Replacement Bus Purchase; (4) Traffic Signal Preemption; and (5) Energy Conservation Retrofit for City Buildings, with the understanding that Council will discuss other legislative priorities before the deadline in March, 2008. This motion was seconded by Councilman Russell.

Mr. Alan Ditmore, resident of Leicester, explained the state's refusal to allow municipalities to directly fund human services.

Mr. Mike Fryar briefed Council on his research regarding diesel buses vs. hybrid buses.

Mr. David Lake urged Council to be aware of the strings attached to federal money.

In response to Vice-Mayor Davis, Ms. Echeverry, Transit Services Manager, clarified the bus replacement request of hybrid buses vs. diesel buses and how the Transit Commission has recommended this multi-year project of replacing the fleet.

Mayor Bellamy pointed out that the request at this time is if Council wants to replace the fleet due to age. She asked that in the future staff provide Council with information on the maintenance costs for each bus, different fuels available, how much a diesel, hybrid or compressed natural gas bus costs, etc.

Councilman Mumpower also asked for information regarding whether topography is a factor that is taken into consideration, because some technologies are less practical than others in different topographies.

The motion made by Councilman Newman and seconded by Councilman Russell carried on a 6-1 vote, with Councilman Mumpower voting "no."

Mayor Bellamy explained the purpose of the National League of Cities trip to be held March 10-12, 2008, in Washington, D.C.

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VII. OTHER BUSINESS:

Vice-Mayor Davis invited the public to the City Council Planning & Economic Development Committee meeting on February 13, 2008, at 5:30 p.m. in the Office of Economic Development at 29 Haywood Street, Asheville, N.C.

Councilwoman Cape briefed Council on the energy forum she recently attended in Raleigh, N.C. She said that the State wants to be a vibrant part of the new energy economy.

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Greenlife Grocery Store on Maxwell Street

City Manager Jackson explained that Mr. Reid Thompson provided City staff with his PowerPoint presentation at the appropriate time and the City's technical consultant has made every effort for the video to be seen and heard.

Mr. Reid Thompson presented a PowerPoint Presentation rega ding Greenlife Grocery store on Maxwell Street and his experience at Council meetings over the past couple of years regarding this issue.

Upon inquiry of Councilwoman Cape, City Manager Jackson said that City staff has been engaged in an ongoing conversation with Greenlife and he will provide Council with the latest update and Council can then decide on any needed direction at that point.

When Councilman Mumpower asked if the City violated the law in any area, City Attorney Oast said it was his opinion that we did not.

After a brief discussion, it was the consensus of Council to have City Manager Jackson provide Council (and the community) with a report on the status on this resolution effort by the end of this week and every two weeks until the conclusion of this matter.

Ms. Brandy Buggs, resident on Maxwell Street, urged Council to proceed quickly with a real resolution to the problem, not just a band-aid fix.

Miscellaneous

Mr. Cecil Bothwell, representing the Asheville-Buncombe Policy Institute, urged Council, in an effort of transparency and openness in government, to adopt an ordinance that when two members of Council meet, it is considered an open meeting. This policy is used in the State of Florida and if Council is interested, he would be happy to provide some ideas about enforcement.

Councilwoman Cape explained why she didn't support this concept and Councilman Mumpower felt the process is close to paralysis in communication.

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 9:55 p.m.

Tersha Lipe
CITY CLERK

Jerry M Bellamy
MAYOR

Tuesday – February 19, 2008 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape (excused at 8:37 due to illness); Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; Councilman William A. Russell Jr.; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Keisha Lipe

Absent: None

PLEDGE OF ALLEGIANCE

Jones Elementary Safety Patrol led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Mumpower gave the invocation.

I. PROCLAMATIONS:

A. RECOGNITION OF MISSION HOSPITALS AS A TOP 100 HOSPITAL IN THE UNITED STATES

Mayor Bellamy recognized Dr. DaMore, staff members from Mission Hospitals, and Mr. Jack Cecil, Chairman of Mission Hospitals, as she read the proclamation proclaiming February 19, 2008, as "Mission Hospitals Day" in the City of Asheville. She explained the many accolades that Mission Hospitals has received over the years and that Mission Hospitals was named a Top 100 Hospital in the United States by US News & World Report. Mr. Cecil talked about the wonderful partnership between the City of Asheville, the community and Mission Hospitals. Dr. DaMore commended the outstanding doctors and employees of Mission Hospitals. He presented Mayor Bellamy with an autographed copy of "The Geography of Bliss by Eric Weiner" which is a book about the ten happiest places to live in the world - Asheville was the only city picked in the United States.

B. PROCLAMATION PROCLAIMING FEBRUARY 2008 AS "GO DIRECT MONTH" IN THE CITY OF ASHEVILLE

Councilwoman Jones explained and urged the public to use the Go Direct Program and then read the proclamation proclaiming February, 2008, as "Go Direct Month" in the City of Asheville. She presented the proclamation to Ms. Celeste Collins, from Ontrack Financial, who briefed City Council on some activities taking place during the month.

II. CONSENT AGENDA:

At the request of Councilman Mumpower, all Consent Agenda items were removed from the Consent Agenda, except for Consent Agenda "A", for discussion and/or individual votes.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON FEBRUARY 12, 2008

B. RESOLUTION AUTHORIZING THE CITY OF ASHEVILLE TO ENTER INTO A CONTRACT WITH PLANNING FIRM GOODY CLANCY TO DEVELOP A DOWNTOWN MASTER PLAN

This item was removed from the Consent Agenda for discussion and/or an individual vote.

C. RESOLUTION AUTHORIZING THE CITY MANAGER TO AMEND AN AGREEMENT WITH REAL ESTATE RESEARCH CONSULTANTS FOR THE DEVELOPMENT AGREEMENT PHASE TO THE PROJECT MANAGEMENT CONTRACT

This item was removed from the Consent Agenda for discussion and/or an individual vote.

D. RESOLUTION APPROVING THE CITY OF ASHEVILLE'S CO-SPONSORED EVENTS FOR THE REMAINDER OF 2008

This item was removed from the Consent Agenda for discussion and/or an individual vote.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Russell moved for the adoption of the Consent Agenda. This motion was seconded by Vice-Mayor Davis and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

B. RESOLUTION NO. 08-25 - RESOLUTION AUTHORIZING THE CITY OF ASHEVILLE TO ENTER INTO A CONTRACT WITH PLANNING FIRM GOODY CLANCY TO DEVELOP A DOWNTOWN MASTER PLAN

Summary: The consideration of a resolution authorizing the City of Asheville to enter into a contract with planning firm Goody Clancy, not to exceed $170,000, to develop the Downtown Master Plan. The execution of this contract is subject to the approval of the City Attorney.

City Council's adoption of the 2007-08 Annual Operating Budget included funding in the amount of $170,000 for the creation of a new Downtown Master Plan. After a thorough selection process the Downtown Master Plan Advisory Panel selected Goody Clancy, an architecture, planning and preservation firm from Boston, Massachusetts, as the best consultant for this project. The Office of Economic Development, along with the Downtown Commission, now seeks Council's approval to execute a contract between the City of Asheville and Goody Clancy in an amount not to exceed $170,000. Project management of the Downtown Master Plan process will be conducted under an hourly rate staffing contract with Ms Sasha Vrtunski. Ms. Vrtunski is a former City Development Director and served in a similar capacity to the Civic Center Task Force.

The Office of Economic Development issued a Request for Qualifications for Urban Planning, Urban Design and Economic Development Planning services for a Downtown Master Plan in October 2007. An advisory panel composed of City staff, County staff and Downtown Commission members was formed to manage the consultant selection process. The Advisory Panel received Statements of Qualifications from twenty six firms; six were short listed and four were invited to interview and present proposals to the panel. Each firm was scored on a list of baseline criteria. The panel came to a consensus that Goody Clancy was the best match for the City.

Pros:

- The contract amount will equal the budget amount of $170,000.

- Entering into an agreement with Goody Clancy to lead the master planning process will make staff resources available for other priority projects while still participating in the master plan process.
- In addition to being a highly qualified and award winning firm, Goody Clancy is partnering with team members whose skills and experience are extraordinarily well suited for this project, including:
  An economic development specialist in cultural heritage who is an Asheville resident, the creator of the National Trust for Historic Preservation's Main Street program, and transportation consultants who have repeatedly worked with the City of Asheville's Engineering department on large projects. The advisory panel projects this team will deliver a detailed, comprehensive and practical planning document to guide the growth of the downtown area over the next ten years.

Con:
- Staff has not identified any disadvantages to contracting with Goody Clancy.

Staff recommends City Council approve a resolution authorizing the City of Asheville to enter into a contract with planning firm Goody Clancy, not to exceed $170,000, to develop the Downtown Master Plan.

Councilman Mumpower was concerned about the amount of money for this master plan and the fact that we used a firm located outside of North Carolina. And, when he looks at what Asheville does with plans, he questioned the value of the downtown development plan in view of some of the other needs the City has.

Councilman Newman moved for the adoption of Resolution No. 08-25. This motion was seconded by Councilwoman Jones and carried on a 5-2 vote, Councilman Mumpower and Councilman Russell voting "no."

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C. RESOLUTION NO. 08-26 - RESOLUTION AUTHORIZING THE CITY MANAGER TO AMEND AN AGREEMENT WITH REAL ESTATE RESEARCH CONSULTANTS FOR THE DEVELOPMENT AGREEMENT PHASE TO THE PROJECT MANAGEMENT CONTRACT

Summary: The consideration of a resolution authorizing the City Manager to amend an agreement with Real Estate Research Consultants for the Development Agreement phase to the Project Management Contract approved on March 6, 2007.

Detailed Proposals on the three (3) downtown redevelopment sites from the approved short list of firms are due February 29th. Staff currently anticipates receiving multiple proposals on both the Park Maintenance Site and Haywood Street site. Staff has received notification that one firm plans to submit a proposal on the Eagle/Market Street site and is evaluating potential benefits to expedite that proposal evaluation and potential site negotiation.

The action requested from Council is to approve the addition to the Project Management Contract Scope of Services approved on March 6, 2007, by City Council. The fee is a not-to-exceed amount of $58,000, plus travel not to exceed $6650, for a total of $64,650. At City Council's original approval of the Project Management Scope of Services for the City Owned Properties, staff indicated that this scope addition to the original Scope of Services would be a future addition to the contract. This addition will allow the project manager to assist in the detailed negotiations with firms advancing from the RFP phase into the Development Agreement phase. This phase includes the detailed analysis of the submitted proposals' approach, finance, and implementation plan. Funding for this addition to the Scope of Services is available in the

City's 2007-08 Budget in the Office of Economic Development budget. A budget amendment is not required.

Pros:

- Providing technical evaluations of the proposals submitted by the pre-qualified development teams in response to the RFPs for the respective sites.
- Assisting in preparing various financial, land use or other technical evaluations consistent with the RFP criteria and protocol.
- Identifying/seeking clarifications regarding developer responses.
- Providing feedback/inputs to a suitable vehicle for structuring a partnership with the developer(s) of selected parcels if that should prove desirable based on the above.
- Reviewing and providing comments on the draft development agreement documents provided to the City by the top ranked developers.
- Ultimate benefits include significant new developments, tax base, employment, and housing opportunities.

Con:

- City will be required to provide compensation to consultant prior to cost recovery.

Staff recommends City Council approve a resolution authorizing the City Manager to amend an agreement with Real Estate Research Consultants for the Development Agreement phase to the Project Management Contract approved on March 6, 2007.

Councilman Mumpower questioned if this is the proper investment of City dollars and explained why he felt this was a flawed process from the beginning.

Councilman Newman felt this is a process we are going through to get underutilized government-owned properties back on our tax rolls and redeveloped in a way that will be good for economic development for the City and good for the neighborhoods the properties are located in.

Vice-Mayor Davis agreed with Councilman Newman in that we are proceeding in this fashion to achieve some of Council's goals, e.g., workforce and affordable housing.

Councilman Newman moved for the adoption of Resolution No. 08-26. This motion was seconded by Vice-Mayor Davis and carried on a 6-1 vote, Councilman Mumpower voting "no."

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D. RESOLUTION NO. 08-27 - RESOLUTION APPROVING THE CITY OF ASHEVILLE'S CO-SPONSORED EVENTS FOR THE REMAINDER OF 2008

Summary: The consideration of a resolution approving co-sponsored events for the remainder of 2008.

The City of Asheville co-sponsors events that benefit local non profit organizations and enhance the community with public events, parades, and festivals. For 2008, the City's financial contribution to co-sponsored events is estimated at **$243,178.69** of in-kind goods and services. Below is the list containing the list of applicants for co-sponsored events in 2008:

Event Name	Date	Type	# of Occurrences	In-Kind/Lost Revenue Support
AIDS Walk	10/4/2008	Walk/Fundraiser	1	$360.00
Asheville Cit-Times	7/20/2008	Race	1	$5,665.44

Half Marathon				
Asheville Criterium	9/28/2008	Race	1	$5,883.09
Asheville Earth Day Celebration	4/19/2008	Festival	1	$5,951.04
Asheville Greek Festival	9/27/2008	Festival	3	$12,246.43
Biltmore - Kiwanis 15K/5K Classic	9/28/2008	Race/Fundraiser	1	$618.34
Buddy Walk	9/13/2008	Walk/Festival	1	$826.40
Celebration Israel	5/18/2008	Festival	1	$1,303.24
CROP Walk	10/11/2008	Walk/Fundraiser	1	$517.00
Downtown After 5	5/4/2008 thur 9/19/2008	Festival	5	$17,497.20
End of Summer Family Fish Fry	10/12/2008	Block Party/Festival	1	$2,426.24
Festival in the Park	5/3/2008 thru 12/13/2008	Festival	45	$21,634.00
Goombay	8/22/2008 thru 8/24/2008	Festival	3	$40,641.42
Halloween Dog Festival	10/25/2008	Festival	1	$823.24
Hard Lox Jewish Food Festival	10/19/2008	Festival	1	$3,891.54
Houses of Worship Walk-a-Thon	5/18/2008	Walk	1	$1,247.70
JCC Falafel 5K	5/4/2008	Race	1	$2,658.24
March for Babies	4/26/2008	Walk/Fundraiser	1	$2,071.44
Memory Walk	5/17/2008	Walk/Fundraiser	1	$1,788.14
Midday Musicals	8/28/2008 thru 10/2/2008	Concert	6	$1,676.20
Montford Music & Arts Festival	5/17/2008	Festival	1	$5,203.04
Night of the Ninja	5/24/2008	Race/Fundraiser	1	$2,282.00
Oasis Shrine Parade	11/8/2008	Parade	1	$44,390.00
Organicfest	9/6/2008	Festival	1	$5,025.04
Professional Cycle Races	9/14/2008	Race/Fundraiser	1	$10,303.09
Rockin the River Raft Race	8/2/2008	Festival/Fundraiser	1	$3,884.00
Run for the Horses	9/20/2008	Walk/Fundraiser	1	$2,154.64
Shamrock Run	3/15/2008	Race/Fundraiser	1	$2,798.24
Shindig on the Green	6/28/2008 thru 8/30/2008	Performance	8	$19,852.52
Smoky Mountain Toy Run	12/6/2008	Parade/Fundraiser	1	$5,130.94
Super Hero Race	11/8/2008	Race/Fundraiser	1	$1,202.00
Thomas Wolfe 8K Road Race	9/27/2008	Race/Fundraiser	1	$2,248.24
Urban Trail Block Party	6/14/2008 thru 9/13/2008	Block Party/Festival	4	$8,360.76
WNC Run/Walk for Autism	9/20/2008	Walk/Fundraiser	1	$1,385.90
TOTAL			101	$241,924.75
Martin Luther King, Jr. Peace March (Previously Dispositioned)				$1,253.94

City of Asheville In-Kind Services/Lost Revenue Total				***$243,178.69***

In an effort to estimate the true costs to the City of Asheville, the Parks and Recreation Department is using a full cost accounting approach that calculates direct costs (such as police, fire, and labor) along with lost revenue (such as permit fees, water usage, and facility use fees). This formula accounts for a significant increase over the costs presented to the City Council in previous years ($76,267 in 2006 and $72,000 in 2007).

The Parks and Recreation and Cultural Arts Department has also seen an increase in the number of eligible applicants for co-sponsorship (27 applicants in 2006 and 2007 with 34 applicants in 2008), which also accounts for the increase in the cost of the co-sponsorship. The co-sponsorship support has also led to organizations increasing the number of occurrences for their events which total 101 for 2008. In 2005 there were 69 occurrences, 48 occurrences in 2006, and 46 occurrences in 2007.

If this program continues to grow at this rate, the City of Asheville risks a significant drain on limited resources, which could result in inadequate service to the City and to the co-sponsor applicants. Additionally, the current process of co-sponsorship approvals coming at the start of the calendar year does not give other City departments who support these events adequate time to plan their budgets for these events.

Below are the Pros and Cons of co-sponsorship at the current level.

Pros:

- Generates money for the local economy.
- Provides additional quality cultural programming and diversity.
- Allows fundraising opportunities for charities.
- Expands and enhances special events and festivals in Asheville.

Cons:

- Events put a strain on City resources such as Police, Fire, Sanitation, etc.
- Events contribute to decline on infrastructure and equipment provided to the organizers.

The Asheville Parks and Recreation Department requests City Council to consider and take action on the 2008 requested co-sponsored events and allow staff to evaluate the current application requirements and procedures and come back to City Council in eight weeks to review new procedures and recommendations for co-sponsorship (e.g., cost-sharing) that would provide better service without compromising City resources. Staff will also ask for a dollar parameter to work from so they can then prioritize the events they feel the City should co-sponsor.

Councilman Mumpower explained why he would not support any co-sponsorships until we eliminate the open air drug market in Asheville. In addition, seeing some of the events listed, he felt to co-sponsor them is a misuse of City dollars and felt that no effort has been made to make people aware of our limitations on co-sponsorships. He felt that the City should concentrate on core services and not pursue things that are nice, but not necessary.

Throughout discussion, Mr. Simmons responded to various questions/comments by City Council, some being, but are not limited to: where does the Holiday Parade fall in this listing; is there a reason why this list comes to Council at the beginning of each calendar year; how does staff determine the projected cost of the event if it is not fully formed; and did staff use the existing matrix with objective criteria to filter these co-sponsorship applications.

Councilwoman Cape requested that when the information comes back to Council, staff break down the in-kind portion of the chart by police department, clean-up, recreation, etc.

Regarding economic development, if we can start showing that we are contributing this much, then the conversation about what the city is doing for the community becomes more vivid.

Councilwoman Jones felt that when staff contacts the sponsors of the event to suggest cost-sharing, for example, sponsors may have other ideas - perhaps having a parade route shorter.

At the suggestion of Vice-Mayor Davis, Mayor Bellamy said Council could review this matter at their March 18, 2008, worksession with supporting documentation to be requested by Council on each of the events requesting co-sponsorship.

Councilman Newman wondered if Council should approve the events through the first six months because we don't want to shock those events. And then, review the events during the last six months of the year, which would give them more time to incorporate those costs into their budget or modify their plan somewhat so they can bring the costs down for the services they need.

In response to Councilman Mumpower, Mr. Simmons said that the sponsors are not notified of whether the City will co-sponsor with them until after City Council has approved the list. However, historically Council has not denied co-sponsorship applications.

Mayor Bellamy said the list of events Council received in the past only showed the festival name as one occurrence, opposed to 8 occurrences for Shindig on the Green, for example. The list presented now is the true picture of reality.

Councilwoman Jones moved to approve the events through the end of July, 2008; approve the multi-occurrence events that begin in that timeframe; and instruct staff to report back to Council in 8 weeks with their recommendations, (which will give notice to the remaining events). This motion was seconded by Vice-Mayor Davis.

When Mayor Bellamy asked for clarification on what staff is to bring back in 8 weeks, other than their findings, it was the consensus of Council to ask staff to include a paragraph on each of the events and the criteria grid used to evaluate each event.

Vice-Mayor Davis said that it is important that the City co-sponsor some of these events because they mean a lot to people and they are an economic driver. He felt sure that when the grid is reviewed that Council will see good value coming from these events.

Mayor Bellamy thanked Mr. Roderick and the City's Chief Financial Officer for making our finances more transparent to the public and clear to City Council.

The motion made by Councilwoman Jones and seconded by Vice-Mayor Davis carried on a 6-1 vote, with Councilman Mumpower voting "no."

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III. PRESENTATIONS & REPORTS:

A. REGIONAL ECONOMIC DEVELOPMENT INCENTIVES

Economic Development Director Sam Powers said that economic development is shifting its approach from competition to collaboration The City of Asheville's Office of Economic Development (OED) has redesigned our organization and strategy to promote "link and leverage" approaches to meet city strategic goals and to achieve regional economic development success. OED staff encourages the formation of quick teams to identify and begin moving on initiatives that further Council and regional goals. City staff actively seeks to find ways to strengthen the ties of

collaboration, to innovate in an open system. The work of many economists and futurists, including Michael Porter, a leader in the field of cluster development, reveal that regions with thick, open networks will be more prosperous. They will learn faster. They will spot opportunities faster. They will align their resources faster, and they will act faster. In the Second Curve economy, business models focus on creating networks and value.

The City of Asheville's OED is taking our lead from open source development, an effective innovation engine developed in the software industry. Open source development is based on voluntary communities of people contributing to common and often complex projects. Ed Morrison of Purdue University has advanced this open source economic development method, and has advanced the approach we are following.

The OED is actively working with numerous other regional organizations and networks to build quality, connected places to attract and retain our people, jobs, investment, and innovative businesses. We are building effective branding to tell the deeper stories of our communities, and we are developing new civic habits of collaboration. Some of the regional economic and community development initiatives are listed below:

AdvantageWest, the regional economic development partnership serving the 23 western counties of North Carolina has been charged by the state legislature to take a lead role in regional marketing and branding, business development, and regional capacity building. The city benefits from, and participates in AdvantageWest programs including the Blue Ridge Entrepreneurial Council, Blue Ridge Angel Investors Network, WNC Regional Film Commission, Blue Ridge Advanced Manufacturing Initiative, MountainSouth USA and Blue Ridge Food Ventures. Each of these regional initiatives meets one or more of City Council's strategic goals. AdvantageWest has also developed a Regional Five Year Vision Plan, which focuses on 10 regional clusters of innovation. Many of the clusters are centered or have strong growth potential in the Asheville Metro area. AdvantageWest has an adopted Program of Work and comprehensive Marketing Plan and associated metrics for 2008, and OED staff will participate in many of the initiatives outlined in the program of work and marketing plan.

CarolinaWest is the sub-regional economic development marketing collaborative that provides marketing of the greater Asheville Metro area and labor shed. CarolinaWest receives cooperative marketing funding from AdvantageWest, as well as from the member counties, and private sector partners. The City participates with CarolinaWest members in program of work that includes site visits, web marketing, and site consultant information briefings.

Land-of-Sky Regional Council of Governments (COG) is a planning and development organization that serves Buncombe, Henderson, Madison, and Transylvania counties. The COG provides planning, grant writing, facilitation and project management services to local governments, and coordinates local, regional and multi-state projects in the area of environment, economic and community development. The COG has played a leadership role in transportation planning, and the City is working with the COG on many transportation planning initiatives. The COG, in close cooperation with numerous stakeholders, has also taken the lead to comprehensively address the assessment, cleanup and redevelopment of the region's Brownfields. The program offers numerous economic, social and environmental benefits to the City and region.

The Economic Development Coalition for Asheville-Buncombe County (EDC) serves as the primary lead in new business recruitment and business retention and expansion efforts for Buncombe County and the City of Asheville. Each new or expanding corporate project is discussed in detail and whenever appropriate, is assisted on a collaborative basis. The City Council has a voting seat on the EDC Board, currently held by Jan Davis, Vice-Mayor. Additionally, the City Manager and City Economic Development Director serve as Ex-Officio EDC Board Members.

During Fiscal Year 2006-07, the EDC assisted firms with a total investment of $64 million and the creation of 450 jobs at an average wage of $17.76/hr Five of these projects, investing $41 million and creating 358 jobs were located inside Asheville's corporate limits.

Pursuant to the NC Department of Commerce creation of its new Urban Progress Zone (UPZ) program, Asheville's ED Dept. was one of the first communities to achieve UPZ designation-Zone 1 in South Asheville and Zone 2 in West Asheville. Eligible manufacturing and distribution firms located in those zones (US Census tracts in which 20% or more of the population earn below the poverty level) may qualify for significant increases in NC Article 3J investment and job creation tax credits. Immediately following notification of UPZ designations, the EDC staff began the process of meeting with the twenty-three (23) firms known to be eligible for Article 3J credits.

The Asheville Metro Business Research Center is a provider of local demographic and economic information. The Center has a long-standing relationship with the City of Asheville as a primary source for current information and analysis. While the Center is a resource for all who contact it, the Center places a special emphasis on promptly responding to the City's queries pertaining to local business needs and industry prospects.

For Council's consideration is a formal financial request for $50,000 by the City of Asheville to support the work of the Economic Development Coalition for Asheville-Buncombe County (EDC) and to continue to participate by holding a voting seat on the EDC board. The City Manager and City ED Director also serve as ex-officio members of the EDC.

The Hub Project is Asheville and Buncombe County's collaborative, sustainable, intentional community, cultural and economic development strategy. The Hub is described as a catalyst for collaboration around a coordinated economic and community development vision of what Asheville and Buncombe County can become.

The Hub's policy governance structure, the Hub Alliance, is comprised of appointments by City Council, County Commission, by community position, and appointments made by the Alliance. The Alliance works to stimulate interaction and collaboration within and across clusters identified by the Alliance—Technology, Rejuvenation, Creativity, Land/Ag, Enterprise/ entrepreneurship, and Advanced Manufacturing. The Alliance will monitor and publicize progress via concrete metrics. The Alliance will support clusters and projects by raising funds from public and private sources.

Since the development and adoption of the clusters by the Hub Alliance, the Hub Cabinet network has been working on numerous initiatives to more fully develop the clusters. Examples of some of the collaborative initiatives being undertaken by the Hub include expanding our fifty-year-old climate services industry and helping the world respond to climate change. The Hub is also building on Asheville's impressive rejuvenation assets to make Asheville synonymous with healthy living and a magnet for visitors and residents seeking healthy bodies, minds and spirits. Community and cultural development that will keep Asheville unique, dynamic and beautiful is also central to the Asheville Hub's vision.

Other regional economic development initiatives. The link and leverage approach to building networks is also providing regional success with many other initiatives. The Partnership on Wayfinding has leveraged city funding of $75,000 to build a $1.5 million regional Wayfinding system with the Tourism Development Authority (TDA), DOT, and other municipalities.

The City's OED provides in-kind support and overhead expenses to provide office location for the Asheville Downtown Association and the US Small Business Administration. The Downtown Association spearheads many initiatives to promote downtown, including their new sponsorship of the annual holiday parade. US SBA provides counseling, technical assistance, and funding for

small businesses. The small investment by the City provides returns to businesses throughout the city and region. The City also supports priority goals in Economic Development and Sense of Place, Heritage, and the Arts by leveraging City funding in support of outside agencies as well as allocating CDBG funding that meets National Objectives established by CDBG. A broad range of economic, community and cultural development organizations work through the city's Outside Agency and CDBG funding process each year. These organizations include Mountain Biz Works, The Arts Council, Media Arts Project, URTV, and many others.

The City works with AB Tech by serving on the Small Business/Incubator Council as the college develops its Small Business Center and Incubator. A great example of one of the open network is that exists to share information and respond to opportunities is the Service Providers Network. The City Minority Business Coordinator works with numerous other agencies, including SBTDC, Chamber, Mountain Biz Works, AB Tech, Self Help, and others, to find collaborative solutions to small business needs. The Service Providers network has been instrumental in assisting with the Opportunities Conferences that have been so successful in linking local businesses with government vendors.

River Redevelopment is one of the region's most important community and economic development challenges, and can yield some of the greatest regional rewards. There is probably no one area of Asheville where the "link and leverage" approach is more crucial due to the many organizations and plans that exist to take this area to the next level. Since 1992, the City of Asheville, Buncombe County, RiverLink, DOT, North Carolina Rural Economic Development Center and other federal and state agencies, and numerous donors and private partners have been collaborating for achievement of the Wilma Dykeman Riverway Master Plan. The Dykeman Plan promotes environmentally-sensitive redevelopment, restoration of the two rivers, and achievement of the recreational/cultural potential with a linear greenway and connected parks. Additionally, the Dykeman Plan calls for a reconfigured and redesigned road – The Wilma Dykeman River way – to serve the area. The Wilma Dykeman Riverway converts the existing road network along the rivers into a multimodal transportation corridor that accommodates bicycle, pedestrian, vehicular and train traffic.

In the last few weeks, City Council received a report from the City Manager outlining the work to date and many successes that have been achieved along the river. The report also notes that timely achievement of the Wilma Dykeman Riverway Plan depends upon a unified collaboration to capitalize on various opportunities and suggests the following actions should be considered: Policy leadership - Form an Asheville/Buncombe County river area advisory commission to effectively combine both design review and economic development policy advisory functions. This could be patterned after the Downtown Commission model with a similar role and structure. Members could be city residents with appointments from the City, County, and possibly from the private sector, community organizations and citizens at large. Project and Program Management - Hire an experienced, knowledgeable manager who is capable of performing project management, planning and coordinating with stakeholders, maintaining an inventory of property ownership, attracting investment, supporting the advisory commission, raising funds and serving as full-time advocate. Consider cost sharing options with Buncombe County and other potential funding partners. Professional Development Services - Perform market analysis of properties, quiet zone studies, and fund training opportunities and speakers. This allocation would be available to engage professional services as needed to support the planning and development goals and objectives as identified by the policy leadership and program management. Public Financing – Enhance levels of public and private capital investment. Pursue public/private partnership opportunities for projects meeting the goals of the Wilma Dykeman Plan and meeting the requirements for issuance of project development bonds (also known as tax increment financing). Community Building – Conduct additional community planning forums, involving property owners, community, and public/private sector leaders. Build greater community awareness, commitment and engagement in key decisions affecting the future of the river district.

In summary, weaving successful networks in our civic spaces will loom large in our future efforts to be regionally competitive. Economic development takes place in the civic space outside the four walls of any one organization. One of the key insights that our city OED staff has developed is an understanding that we need to actively engage and continue to build successful networks and collaborations more effectively to meet City strategic goals.

Mr. David Brown, Executive Director of the Hub, presented City Council with a PowerPoint Presentation which requests consideration of the following: (1) Urge a study re the feasibility of using space in the Asheville Civic Center to house RENCI's Communication/ Demonstration Center (visible, publicly accessible downtown space is needed); (2) Urge consideration of advancing Asheville as the state's demonstration site of a Green City that is adopting specific measures to anticipate climate change; and (3) Urge City Council to remember that the Asheville Hub Alliance is ready, through the Hub Cabinet , to propose specific programs to implement Council objectives (e.g., the Riverfront, Low Income Housing).

The Hub seeks to leverage resources to grow the clusters, the community and region as a whole. The Hub Cabinet has developed a list of projects and a procedure for judging projects based on a criterion that supports Council goals. The Hub is asking the City to approve funding for 3 specific initiatives that will further the clusters and benefit the other city strategic goals adopted by City Council. The City has approved funding for regional economic development in the current budget. Further, the Hub is requesting that the City continue to include the Hub in funding in the coming budget for three additional projects.

He requested from the current year funds (2007-08): (1) $24,250 - to a consortium of Asheville Arts Agencies to produce and distribute a 6-7 minute promotional video that emphasizes the relationship between a vibrant arts community and entrepreneurship. This film will be similar to the Climate Alive video presented at NCDC; (2) $15,000 - to Handmade in America for marketing the work of the artists featured in the Asheville-based Design Center; and (3) $10,000 - to Asheville Hatchfest for a portion of the money required to hire and equip a development.

From next year's funds (2008-09), he requested: (1) $17,000 - Master Speakers Series Publicity to establish a major, annual lecture-coaching event at the Asheville Art Museum, an event that will assist local artists and draw tourists (share with County); (2) $20,000 - Artist Resource Center Refurbish/Rental to establish a central place where incubating businesses of Asheville artists and performing groups can receive of entrepreneurial support and training; and (3) $20,000 - Handmade Home Promotion to publicize and advertise, through professional associations, the concept of Asheville's Design Center and the bringing together of crafts and construction professionals.

Councilwoman Cape suggested the City Council Planning & Economic Development Committee (PED) review the 3 initiatives (non-funding related) and the River Redevelopment issue and bring their recommendations back to City Council on how the City can participate. It was the consensus of the majority of Council to accept Councilwoman Cape's suggestion.

Councilwoman Cape noted that there is an existing $50,000 appropriation in the OED's budget and Council has two requests for that appropriation - the Hub initiatives and the EDC board.

Councilman Newman felt it was important for Council to think of a total dollar amount for economic development, because there are other economic development proposals out there which will be seeking money from the City as well. He felt it would be helpful to give direction on the budget and then decide the priorities.

Vice-Mayor Davis supported the City appropriating $50,000 to support the work of the EDC and to continue to participate by holding a voting seat on the EDC board.

Mayor Bellamy requested City Manager Jackson provide to the PED Committee additional information on what our economic development tools are and what financial commitments Council has made.

In summary of a discussion of which City Council committee should review which HUB requests, Mayor Bellamy said that Councilman Russell serves on both the City Council Revenue & Finance Committee and the PED Committee so he will be able to share valuable information.

Councilman Mumpower explained why he felt this is a misinvestment of City dollars. He said that for these to be the first things that come to Council from the HUB project is terribly discouraging. He said these may be great initiatives, but didn't think the City should fund or support them.

Councilwoman Cape believed we need to have a worksession on what the City wants to support economic development financially in the community.

After a brief discussion, it was the consensus of the majority of Council that the PED Committee should look at not only the 3 initiatives, but the funding issues as well.

IV. PUBLIC HEARINGS:

V. UNFINISHED BUSINESS:

A. WATER LINE EXTENSION INCENTIVES PARTICIPATION AND EVALUATION FORM FOR AFFORDABLE HOUSING AND INFILL DEVELOPMENT

At the request of staff, Councilman Newman moved to continue this item until staff is prepared to bring the matter back to Council. This motion was seconded by Councilwoman Jones and carried unanimously.

VI. NEW BUSINESS:

A. TRAFFIC MANAGEMENT POLICY

Councilman Newman said that he requested this item on the agenda so Council could take a look at our existing policies and determine if we would like to update them.

He presented a December 21, 2006, memo from then City Traffic Engineer Anthony Butzek which intended to summarize the nature of the outstanding requests for traffic calming in the city:

"Since the traffic calming policy was adopted, staff has been collecting traffic data for streets which we receive requests for traffic calming. The number of requests has always greatly exceeded the ability to install traffic calming measures. With about 20 streets on which we have completed traffic calming, and about 10 more streets currently in the development process, there remain requests on about 200 separate streets in the city.

"Without spending the time calculating the exact total length of street this represents, my best estimate is about 100 miles. At a per-mile cost of between $77,000 (engineer's estimate) and $115,000 (last bid price), this amounts to a total construction cost of between $7.7 million and $11.5 million. If we limit all projects to speed humps, the cost drops to about $50,000 per mile, or $5 million total. These are construction costs only – the staff and/or consultant time required to administer this program probably amounts to an additional 15%-20% of these totals. While all of the complainants would consider their requests valid, I might estimate that 25%-30%

of the streets probably are justifiable candidates for calming. This puts the lowest estimate, assuming 25 miles of streets for speed humps only, at about $1.5 million including staff and/or consultant costs.

"While there are many pros to traffic calming, including improved safety and quality of life for residents, it is also important to consider the cons. These include delay to emergency response, vocal resident opposition, and increased maintenance costs.

"Based on this information, if Council were to consider reinstating funding for traffic calming, I would consider $150,000 - $200,000 per year as a reasonable funding level in order to provide a productive program."

Councilman Newman's perspective is that the community would be best served by focusing our traffic calming efforts on low-tech and low-cost strategies such as speed humps, rather than the more expensive and controversial measures we have used in some cases in the past. For a relatively modest investment, these low-cost strategies could allow us to provide some meaningful traffic calming relief in neighborhoods throughout the city over the next several years.

Upon inquiry of Mayor Bellamy, Councilman Newman agreed for staff to provide some best practice methods, noting his concern that they may be expensive and he is in favor of affordable methods.

In response to Vice-Mayor Davis, Traffic Engineer Ken Putnam updated Council on the Kimberly Avenue traffic calming project. Mr. Putnam said they are committed to completing this project in 2008.

Councilwoman Cape asked for staff to bring to Council other options (other than bumps and barriers) for traffic calming, e.g., how parking patterns affect traffic flow, how stop signs affect traffic flow, painting treatments on the roads, etc.

Councilman Mumpower questioned the effectiveness of placing obstacles in our streets. He felt we need enforcement of our traffic laws. He requested information on what resources our Police Department needs or what creative efforts they might initiate to enhance our traffic enforcement.

It was the consensus of the majority of Council to ask staff to provide Council with information on low-cost strategies, streamlining the traffic calming process, new techniques, and traffic enforcement at the March 18, 2008, worksession.

Closed Session

Mayor Bellamy said that during Council's break, Council would conduct a closed session.

At 7:10 p.m., Councilman Mumpower moved to go into closed session for the following reasons: (1) to discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations, provided that any action authorizing the payment of economic development incentives will occur in open session. The statutory authorization is contained in G.S. 143-318.11 (a) (4); and (2) to establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of contracts for the acquisition of real property by purchase, option, exchange or lease. The statutory authorization is contained in G.S. 143-318.11 (a) (5). This motion was seconded by Councilwoman Jones and carried unanimously.

At 7:40 p.m., Vice Mayor Davis moved to come out of closed session. This motion was seconded by Councilman Russell and carried unanimously.

B. QUARTERLY MANAGEMENT REPORT

Financial Report

Chief Financial Officer Ben Durant briefed Council on the City's overall financial position for the Fiscal Year 2007 as follows:

Amendments. Since the 1st quarter budget report was presented to City Council, the General Fund budget has been amended five times, resulting in an overall increase in the budget of $837,940. A summary of the budget amendments is included below.

Amendment	Amount
Demolition of Tunnel Rd Property	$353,000
Bring Homeless Initiative Program In-House	50,250
Volvo Economic Incentive Grant	85,600
City Match for Hybrid Bus Purchase	100,000
Sardis Rd. & Schenck Annexations	249,090
Total Amendments	837,940
9/30/2007 Budget	90,584,498
12/31/2007 Budget	$91,422,438

Revenues. Through December 31, 2007, the City has collected $34,866,982 in General Fund revenue, which represents approximately 40.1% of the total General Fund revenue budget. At this point in the prior fiscal year, the City had collected $28.8 million in General Fund revenue, which represented approximately 36.3% of the revenue budget. Based on current trends, staff anticipates that Fiscal Year 2007-08 year-end revenue will exceed budget by $960,000.

Expenditures. General Fund expenditures through December 31st, total $43,706,029 or 47.8% of the budget. At this point in the prior fiscal year, expenditures were at $38.5 million or 47.2% of the budget. Based on current trends, staff anticipates that Fiscal Year 2007-08 year-end expenditures will come in under budget by only $40,000. Budget savings are projected to be less than in previous years due to health care costs which are running ahead of budget.

Fund Balance. As reported to Council at the recent audit presentation, the City ended Fiscal Year 2006-07 with available fund balance of $21.85 million or 26% of year-end Fiscal Year 2006-07 expenditures. In the current fiscal year, the City appropriated $4.4 million in fund balance as a part of the adopted budget to fund one-time capital and operating initiatives. Since July 1st, Council has appropriated an additional $715,911 in fund balance, which brings the total fund balance appropriation in the current fiscal year to $5.14 million. Based on current year-end revenue and expenditure estimates for Fiscal Year 2007-08, staff is projecting that available fund balance will decrease by $5.32 million to $16,525,600, which will equate to 18.1% of estimated year-end expenditures.

He said that during the Fiscal Year 2006-07 audit presentation at the January 8, 2008, meeting, Council requested additional information and updates on several items that came up during the presentation.

Audit Findings Update - As discussed during the presentation, the City's auditors documented two findings against the City in the Fiscal Year 2006-07 Financial Report. One finding was for erroneous bank reconciliations in the Transit Fund and the other was for non-inspection of HOME projects. Staff had already begun to take corrective action in both areas prior to the audit presentation. An update on those actions is provided below.

Bank Reconciliations

To address the finding regarding bank reconciliations, the Finance Department has cross-trained staff so that additional individuals are capable of performing the bank reconciliations. Also, the Finance Department is currently recruiting for the Treasurer position, which will have direct supervision over the staff that is performing the bank reconciliations.

Inspection of HOME Projects

Of the 12 projects in non-compliance with inspection requirements at the end of Fiscal Year 2006-07, seven have been brought into compliance (inspected). He presented an outlined plan for the completion of the remaining five.

Additional Financial Information - Council also requested that staff provide additional financial information that would show how Fiscal Year 2006-07 revenues, expenditures, and fund balance compared to the prior fiscal year. He reviewed a table which provided detailed comparative financial data for the General Fund for the 2005-06 and 2006-07 fiscal years. Specific items to note include:

Revenues:

- Overall revenues grew by 9.89%.
- Property taxes grew by 11.9%. As staff indicated to Council last spring during the Fiscal Year 2007-08 budget worksessions, property tax growth exceeded expectations in Fiscal Year 2006-07 due to higher than expected growth in the tax base; and appeal losses from revaluation were less than the County tax office had estimated.
- Sales tax revenue grew by 8.0% as a result of strong growth in retail sales.
- License & Permit revenue grew by 18.8% primarily due to increases in building permits and Council-adopted increases in the business privilege fee.

Expenditures:

- Expenditures, including transfers to other funds, grew by 7.39%.
- Public Safety expenditures increased 8.6% due to the stepped-up replacement of vehicles in the Police and Fire departments, and the addition of eighteen firefighters in January 2007 to staff the new fire stations that went into operation in July.
- General Government expenditures grew by 8.5% primarily due to increases in health care expenses.
- Planning expenses were up by 15.8% as a result of three staff additions that were approved to help handle the increased workload in development review.
- The 16.0% increase in debt service reflects the first year debt service payments on the new fire stations.

Fund Balance:

- Total fund balance increased by $3.99 million in Fiscal Year 2006-07, compared to a total increase of $4.82 million in the previous fiscal year.
- As noted during the audit presentation, despite the fact that total fund balance increased by $3.99 million, the amount of fund balance available for appropriation *decreased* from $23.79 million to $21.85 million. This decrease was the due to the fact that a larger portion of total fund balance was required to be held in reserve in Fiscal Year 2006-07 as compared to Fiscal Year 2007-08.
- Fund balance available for appropriation dropped from 31.0% at the end of Fiscal Year 2005-06 to 26.5% at the end of Fiscal Year 2006-07.

In response to Mayor Bellamy, Mr. Durant explained the health care cost increase, noting that our health care consultant is doing a comparison and he would provide Council with a more refined analysis.

When Mayor Bellamy asked about any reimbursement for the General Fund appropriation of $353,000 for the demolition on Tunnel Road, City Attorney Oast said that he would provide Council with an update on that.

Councilman Mumpower explained why he felt that Asheville is incrementally living beyond our means.

In response to Councilman Mumpower, Mr. Durant clarified that in the budget projections that staff presented to Council at their retreat, they made a recommendation not to use Fund Balance going into the upcoming budget to support programs because we have made a good use of Fund Balance over the past couple of years and we have addressed some strategic issues and infrastructure needs.

In response to Mayor Bellamy, Mr. Durant explained that some Fund Balance purchases were for one-time core services for capital expenditures, initiatives which Council identified in their Strategic Operating Plan, e.g., new sidewalk crew to lay more sidewalks; new sanitation crew for downtown clean-up; more money for greenways; addition of more police officers; removing both energy and cost inefficient vehicles from our fleet; investment in our facilities for energy conservation; etc. He said that basically the following accounted for a lot of the one-time uses of Fund Balance: take home vehicles for the Police Department, increased building maintenance, greenways and overall replacing our fleet.

In response to Mayor Bellamy, Mr. Durant explained how the City finances fire stations and large vehicles.

Mayor Bellamy asked that in the next quarterly report that staff provide Council with information on where the one-time allocations are spent and the status of those projects.

Mayor Bellamy felt it is important to realize that decisions were made to do the capital expenditures because they hadn't been care of in the past. It might be prudent for the citizens of Asheville, who expect core services to be taken care of, to know that Council is responding to those requests. Going forward, Council has put in place opportunities for the community to see where we are going with transparency by providing a five year outlay of capital improvements showing what needs to be done for our community.

In response to Councilwoman Jones, it was the consensus of the majority of Council to have staff provide Council with the cost of Council meetings per hour, including staff time.

Strategic Operating Plan

Assistant to the City Manager Lauren Bradley said that the Asheville City Council has identified eight priority areas as part of its Strategic Operating plan with short and long range multi-year goals for each priority area. Staff is responsible for completing goals and reporting quarterly on its progress.

As part of the close out of the second quarter of the 2008-08 fiscal year, staff will provide performance indicators and measurements on key strategic initiatives. In addition, Council has been provided with information on the focus of the Police Department's efforts on drug interdiction and community policing. Council has been provided detailed performance measures related to the Police Department's Seven Point Plan addressing criminal activity and drug activity in high crime areas; and the Department's work with the Department of Justice and other law enforcement agencies to develop best practices in performance measurements.

She highlighted three major key accomplishments from the last year. We created an annual report but it doesn't include all of the good work that has happened throughout the organization. She explained three highlights from that report: (1) The City of Asheville's Youth Leadership Academy; (2) Fire and Rescue Emergency Response Branch (new Fire Stations 10 and 11); and (3) the Asheville Downtown Farmer's Market, which will open in April, 19, 2008.

Councilman Mumpower explained that he didn't trust law enforcement statistics because they can be manipulated. The street realities say something different - the people who live in public housing, vulnerable neighborhoods and victims of crime. What we talked about was coming up with some subjective sources of feedback to measure our effectiveness. One was direct feedback measure is in the form of a simple one-page survey form given to each manager and assistant manager in all public housing developments to provide us with current, monthly feedback. We could also set up some routine feedback loops with our school systems, social service agencies, and business organizations. Also there should be some on-going measurement of our court system, which much more than our police, is responsible for this open air drug market that we have. We need some kind of feedback so Council and our police can get regular information about what is going on in the court system and what is working and what is not.

Ms. Bradley said that staff will be coming to Council next week asking for an allocation for a citizens survey that will go out to a random sampling of households in order to ask questions, among others, how safe do you feel in the neighborhood. If there is a consensus of Council, staff can come back with specific proposals for additional types of surveying or additional performance measurements.

City Manager Jackson said that staff wants the quarterly reports to be useful and important to Council so Council can make important policy decisions. He suggested that the City Council Public Safety Committee entertain the dialogue discussed and report back to Council.

Councilwoman Jones noted that while there are a lot of issues and problems with the Housing Authority, things are being addressed. She noted that the South French Broad Avenue Association has expressed appreciation to the improvements in their area.

It was the recommendation of Mayor Bellamy, and the consensus of the majority of Council, that economic development issues be reported to Council on a quarterly basis.

There was a brief discussion, initiated by Councilwoman Cape, about quarterly reports on the four City Council committees. As a result of that discussion, City Manager Jackson explained how his office manages Council's action items and that he would have a notebook in his office for Council to review of how items are followed-up on and resolved.

Mayor Bellamy suggested when items come back to Council on their agenda, that the staff reports be identified that this was from a previous Council meeting and this is follow-up information.

C. ANNEXATION DISCUSSION

Mayor Bellamy said that a House Committee studying the state's annexation laws will hold one of it's meetings in Asheville, where Biltmore Lake residents have resisted the City's plans to annex them. The House Select Committee on Municipal Annexation, chaired by Rep. Bruce Goforth of Asheville and Rep. Paul Lebuke of Durham have met. The public hearing will be held at 5:00 p.m. on March 19, 2008. Individuals will be allowed three minutes for comments.

She felt the City needed to make a presentation on this issue. Mr. Ellis Hankins from the N.C. League of Municipalities will also be making a presentation. She wanted to make sure that it

is Council's position that we take a formal position on this issue and who from Council will attend the hearing.

Mayor Bellamy responded to Councilman Mumpower on why the information City Council has been given was not placed on the City's website for the public access. Mayor Bellamy said that Council will need to revise their policy if it is now Council's direction to add items to the website after the agenda is published. She also noted that as a follow-up from Council's retreat, Council will be discussing their rules at their March 18 worksession.

Vice-Mayor Davis felt that it was prudent that Council be at the public hearing. Otherwise it is just an opportunity for people who have concerns about being annexed to step forward without the other side being heard. We have legitimate grounds for being at the hearing as Asheville is not being treated fairly and we need the ability to grow healthy.

At 8:37 p.m., Councilman Newman moved to excuse Councilwoman Cape from the meeting due to illness. This motion was seconded by Councilwoman Jones and carried unanimously.

Councilman Newman said that the committee that has been set up by the legislature is looking at the issues of annexation generally. There are issues across the state about what is a fair annexation policy. Some of those issues play out in Asheville as well. But Asheville also has some pretty unique issues in terms of growth that are truly unique to other cities in the state. If you don't spend a lot of time looking at some of the issues in other parts of the state, you might think that whenever new developments come in that these issues of involuntary annexation rise up and are a big deal all over the state. The truth of the matter is that issues of involuntary annexation are fairly rare around the state. It does happen in other areas and when it does happen, there are people on both sides of the issue and there is controversy. But the fact is that they are very rare. Some of the information that we have and should share with the committee is that the City of Charlotte added over 83,000 people between 1990 and 2000 and about 55,000 since 2000, for a total of 138,000 people (or almost 2 entire cities of Asheville). Ninety-eight percent of those people joined the City of Charlotte through a voluntary annexation process. New developments were built around the City limits and City infrastructure was extended to those new developments. The developers were required, as a condition of getting City infrastructure, to come into the City. Here in Asheville there has to be a lawsuit filed every time a new subdivision is built. It is a bad way to do business and it's very divisive way for a City to deal with the issues of growth. We should have an opportunity to talk to the committee about our unique issues around the need for voluntary annexation as developers wish to connect to our infrastructure, that there should be a reciprocal responsibility. We have a responsibility to provide infrastructure and they have a responsibility to share in the financing of the community's growth. We could also secondarily talk about if Council wants to have a position around issues of other aspects of annexation, but he was sure there would be a greater diversity of views on Council on those matters.

Mayor Bellamy said one question on the table is do we want to take a position on voluntary annexation and offering that as a tool we would love to have when it comes to looking at growth for our area. In addition, Councilman Newman also wanted to make a point to the committee that if you don't have voluntary annexation, it forces the issue of involuntary annexation on a much more frequent basis. So, if you don't like involuntary annexation, you should allow Asheville to grow as other cities do.

Councilman Mumpower reiterated that Asheville is treated differently than any City in the state and for us to articulate that unfairness is something we all can agree. He doesn't support forced annexation, but he did think there are arguments why some of Council do - because Asheville isn't treated fairly. He was concerned that Asheville has been on the end of punitive legislation by our state representatives before and this might prove to be another opportunity for such. He would be delighted to join with the group in standing up for Asheville.

Mayor Bellamy confirmed it is Council's position for strong support for voluntary annexation surrounding the issue of fairness.

Vice-Mayor Davis felt Council should be prepared to make a case statistically about involuntary annexation. He noted that in about 15 years Asheville has annexed 8,000 people - the lowest of any City in the state and partly because almost every annexation is involuntary and they are hostile in nature, creating a lot of anxiety and unhappiness for our nearby residents and for the Asheville citizens.

In response to Mayor Bellamy, she confirmed that the following Council members will attend the March 19 public hearing: Mayor Bellamy, Vice-Mayor Davis, Councilman Newman, Councilman Russell and barring any scheduling conflicts, Councilwoman Jones and Councilman Mumpower.

Mayor Bellamy instructed staff to provide Council with information and statistics in order to make their presentation effective.

At the request of Councilwoman Jones, Mayor Bellamy asked staff to report on how we are delivering our services to the annexation areas already incorporated into the City.

D. BOARDS & COMMISSIONS

Vice-Mayor Davis, Chair of the Boards & Commissions Committee (Committee), reviewed with Council the following various board/commission vacancies:

It was the recommendation of the Committee to follow the recommendations of the Alcoholic Beverage Control Board to leave existing member Barbara Field in her position until a real estate transaction has been completed. Therefore, Mayor Bellamy moved to allow Barbara Field to continue serving until a real estate transaction has been completed. This motion was seconded by Councilwoman Jones and carried unanimously.

Councilwoman Jones moved to interview David Brown and Lee McElrath (who are currently Alternates to the Board of Adjustment) and Anthony Palazoo and Ester Elizabeth Manheimer for positions on the Board of Adjustment. This motion was seconded by Councilman Newman and carried on a 5-1 vote, with Councilman Mumpower voting "no."

Regarding the position on the Citizens-Police Advisory Committee, it was the recommendation of the Committee, and the consensus of Council, for the City Clerk to re-advertise for a west representative on the Citizens-Police Advisory Committee.

It was the consensus of Council to interview J. Michael Burke and John West for a position on the Civic Center Commission.

It was the consensus of Council to interview Sid Heilbraun, Kelly Stamey, Kate Pett and Jill Fromewick for positions on the Asheville-Buncombe Community Relations Council.

After discussing disbanding of the Economic Development Advisory Committee (EDC) with the EDC, it was the Committee's recommendation to dissolve the EDC and allow the members to serve in another related capacity. Councilman Newman moved to dissolve the Economic Development Advisory Committee. This motion was seconded by Councilman Russell and carried unanimously. Vice-Mayor Davis noted that a letter of appreciation would be sent to the members.

Councilman Newman moved to reappoint David Spector and Gary Hamrick to the Sustainable Advisory Committee on Energy and the Environment. This motion was seconded by

Mayor Bellamy and carried unanimously. In addition, it was the consensus of Council to interview Melanie Brethauer, Brandee Boggs, Marcus Renner, Ashley Featherstone, Kristin M. Peppel and Daniel Asher for a position on the Sustainable Advisory Committee on Energy and the Environment.

At the recommendation of the Committee, Mayor Bellamy moved to reappoint Paul Ford, Geraldine Melendez and Jeff McMickens to the Asheville-Buncombe Fair Housing Commission. This motion was seconded by Councilman Russell and carried unanimously.

It was the consensus of Council to interview David Flander, Trent McDevitt, Nancy Sokolove and Heidi Campbell-Robinson for a position on the Asheville Film Commission.

At the recommendation of the Committee, Mayor Bellamy moved to appoint Pat Leckey (City Accountant) to the Firemen's Relief Fund. This motion was seconded by Councilwoman Jones and carried unanimously.

At the Committee's recommendation, Councilman Newman moved to reappoint Christopher Gilbert to the Asheville Greenway Commission. In addition, it was the consensus of Council to interview Jonah Butcher, Stephanie Pankiewicz, Ellen Bailey, Thomas E. Mesk, Marcie Bromberg and Tom Bumet for a position on the Asheville Greenway Commission.

At the Committee's recommendation, Councilman Newman moved to reappoint W. Louis Bissette Jr. to the Metropolitan Sewerage Control Board. This motion was seconded by Mayor Bellamy and carried unanimously.

At the Committee's recommendation, Mayor Bellamy moved to allow Bill Fishburne (who has moved outside the City limits) to continue service on the Public Art Board until his term expires. This motion was seconded by Councilman Newman and carried unanimously. In addition, at the Public Art Board's recommendation and the Committee's recommendation, Mayor Bellamy moved to appoint Dana Irwin to the Public Art Board. This motion was seconded by Councilman Mumpower and carried unanimously. After a short discussion concerning the responsibilities of the Public Art Board and the need to advise the Board of their role, Councilman Mumpower moved to reappoint Kenn Kotara, Barbara Cary, Julie Calhoun-Roepnack and Batty Pate Jr. to the Public Art Board. This motion was seconded by Councilwoman Jones and carried unanimously. It was confirmed that the Committee's recommendation was to advise City staff to review the ordinance establishing the Board and to make sure the Board is adhering to their responsibilities.

At the Commission's recommendation, Councilwoman Jones moved to reappoint Wendy Kussrow (member at Council's discretion), Pattiy Torno (owner of property located within the River District), Richard Hall (Member of the RiverLink Board of Directors) and Robert Shepherd (Member of the RiverLink Board of Directors) to the River District Design Review Committee. This motion was seconded by Councilman Mumpower and carried unanimously. In addition, Councilman Mumpower moved to appoint Marty Black (owner of property located within the River District) to the River District Design Review Committee. This motion was seconded by Councilwoman Jones and carried unanimously. After a brief discussion of what constituted a "design professional" for the remaining seat, it was the consensus of Council to interview Gregory D. Sills and re-advertise for a "design professional" for the River District Design Review Committee.

At the Committee's recommendation, Mayor Bellamy moved to reappoint J. Neal Jackson and Yuri Koslen to the Asheville Transit Commission. This motion was seconded by Councilwoman Jones and carried unanimously. It was the consensus of Council to interview Michael Orford, Josh O'Conner, Larry D. Chapman, David Lack and Bruce Emory for a position on the Asheville Transit Commission.

At the Committee's recommendation, Councilman Mumpower moved to reappoint Robert Oast and Parker Andes to the Asheville Tree Commission.

E. COUNCIL LIAISON ASSIGNMENTS

Vice-Mayor Davis was pleased to accept the liaison appointment to the Citizens/Police Advisory Committee.

After a short discussion about whether the Asheville-Buncombe Crimestoppers Board of Directors could have a Council liaison instead of a voting member, it was the consensus of Council to instruct the City Clerk to contact the Board to see if their by-laws could be amended to reflect that and to report back to the Boards & Commissions Committee.

Mayor Bellamy noted that she asked Councilwoman Cape to Chair the City Council Planning & Economic Development Committee and she agreed. It was the consensus of Council to appoint Councilman Cape (as Chair), Vice-Mayor Davis and Councilman Russell to the City Council Planning & Economic Development Committee.

Mayor Bellamy noted that she asked Vice-Mayor Davis to Chair the City Council Public Safety Committee and he agreed. It was the consensus of Council to appoint Vice-Mayor Davis (as Chair), Mayor Bellamy and Councilwoman Jones to the City Council Public Safety Committee.

Mayor Bellamy noted that she asked Councilwoman Jones to Chair the City Council Revenue & Finance Committee and she agreed. It was the consensus of Council to appoint Councilwoman Jones (Chair), Councilman Newman and Councilman Russell to the City Council Revenue & Finance Committee. In addition, it was the consensus of Council to change the name of the City Council Revenue & Finance Committee to Finance Committee.

Vice-Mayor Davis said that the Asheville Area Council for Performing Arts requested a City Council liaison. Mayor Bellamy moved to appoint Vice-Mayor Davis as the liaison to the Asheville Area Council for Performing Arts. This motion was seconded by Councilwoman Jones and carried unanimously.

Vice-Mayor Davis also noted that the Sister Cities Committee has requested a City Council liaison. In addition, the advisory board for homelessness is considering a City Council liaison as well. He said that items will be reviewed by the Boards & Commissions Committee. Mayor Bellamy asked that she be considered as the liaison to the advisory board for homelessness.

VII. OTHER BUSINESS:

Per Council's direction, City Manager Jackson presented City Council with an update on the GreenLife conditional zoning application status dated February 19, 2008. Also per Council's direction, he will provide the update to the neighborhood coordinator tomorrow morning for distribution to the public. City Manager Jackson asked for clarification on the form of the two-week update report, e.g., scheduled item on the agenda, memorandum form, or e-mail. After a brief discussion, it was the consensus of the majority of Council for staff to update Council every two-weeks via e-mail.

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Reid Thompson said that instead of making his presentation, he would appreciate a copy of the update on GreenLife's zoning application status. City Manager Jackson handed Mr. Thompson a copy of the report.

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 9:37 p.m.

Keisha Lee
CITY CLERK

Jerry M Bellamy
MAYOR

Regular Meeting

Present: Vice-Mayor Jan B. Davis, Presiding; Councilwoman Robin L. Cape; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; Councilman William A. Russell Jr.; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and Deputy City Clerk Jacalyn Colson.

Absent: Mayor Terry M. Bellamy

PLEDGE OF ALLEGIANCE

Vice-Mayor Davis led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Newman gave the invocation.

I. PROCLAMATIONS:

II. CONSENT AGENDA:

At the request of Councilman Mumpower, Consent Agenda Items "K", "L", "M", "O" and "P" were removed from the Consent Agenda for discussion and/or individual votes.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON FEBRUARY 19, 2008

B. RESOLUTION NO. 08-28- RESOLUTION APPOINTING A MEMBER TO THE FIREMEN'S RELIEF FUND

Summary: The term of Ben Durant, a member of the Firemen's Relief Fund, expired on January 1, 2008.

On February 19, 2008, it was the consensus of City Council to appoint Pat Lackey, as a member to the Firemen's Relief Fund, term to expire January 1, 2010, or until her successor has been appointed.

RESOLUTION BOOK NO. 31 - PAGE 84

C. RESOLUTION NO. 08-29 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE TRANSIT COMMISSION

Summary: The terms of Mr. J. Neal Jackson and Mr. Yuri Koslen as members to the Asheville Transit Commission expired on December 31, 2007.

On February 19, 2008, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Mr. J. Neal Jackson as a member to serve an additional three year term, term to expire December 31, 2010, or until his successor has been appointed.

In addition, on February 19, 2008, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Mr. Yuri Koslen as a member to serve a three year term, term to expire December 31, 2010, or until his successor has been appointed.

RESOLUTION BOOK NO. 31 - PAGE 85

D. RESOLUTION NO. 08-30- RESOLUTION APPOINTING MEMBERS TO THE RIVER DISTRICT DESIGN REVIEW COMMITTEE

Summary: The terms of Wendy Kussrow, Pattiy Tomo, Richard Hall, Robert Shepherd and Jane Mathews, Ken Fulford and Hunt Mallett as members on the River District Design Review Committee, expired on September 1, 2007.

On February 19, 2008, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Wendy Kussrow (member at Council's discretion), Pattiy Tomo (owner of property located within the River District), Richard Hall (Member of the RiverLink Board of Directors) and Robert Shepherd (Member of the RiverLink Board of Directors) as members to the River District Design Review Committee, terms to expire September 1, 2010.

In addition, on February 19, 2008 City Council instructed the City Clerk to prepare the proper paperwork to appoint Marty Black (owner of property located within the River District) to the River District Design Review Committee.

RESOLUTION BOOK NO. 31 - PAGE 86

E. RESOLUTION NO. 08-31 - RESOLUTION APPOINTING MEMBERS TO THE PUBLIC ART BOARD

Summary: The terms of Kenn Kotara, Barbara Cary, Julie Calhoun-Roepnack and Barry Pate as members to the Public Art Board expired on December 31, 2007.

On February 19, 2008, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Kenn Kotara, Barbara Cary, Julie Calhoun-Roepnack and Barry Pate as members to the Public Art Board to serve a three year term, term to expire December 31, 2010, or until their successors have been appointed.

In addition, on February 19, 2008, City Council instructed the City Clerk to prepare the proper paperwork to remove Kristen MacLeod and appoint Dana Erwin as a member to the Public Art Board to serve the unexpired term of Kristen MacLeod, term to expire December 31, 2008, or until her successor has been appointed.

RESOLUTION BOOK NO. 31 - PAGE 87

F. RESOLUTION NO. 08-32 - RESOLUTION APPOINTING A MEMBER TO THE METROPOLITAN SEWERAGE DISTRICT BOARD OF DIRECTORS

Summary: The term of W. Louis Bissette, Jr., as a member on the Metropolitan Sewerage District Board, expired on January 19, 2008.

On February 19, 2008, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Mr. W. Louis Bissette, Jr. as a member on the Metropolitan Sewerage District Board to serve an additional three year term, term to expire January 19, 2011, or until his successor has been appointed.

RESOLUTION BOOK NO. 31 - PAGE 88

G. RESOLUTION NO. 08-33- RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE GREENWAY COMMISSION

Summary: The term of Christopher Gilbert, as a member on the Asheville Greenway Commission, expired on December 31, 2007.

On February 19, 2008, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Christopher Gilbert as a member on the Asheville Greenway Commission to serve a three year term, term to expire December 31, 2010, or until his successor has been appointed.

RESOLUTION BOOK NO. 31 - PAGE 89

H. RESOLUTION NO. 08-34- RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE-BUNCOMBE FAIR HOUSING COMMISSION

Summary: The terms of Paul Ford, Geraldine Melendez and Jeff McMickens as members on the Asheville-Buncombe Fair Housing Commission, expired on December 31, 2007.

On February 19, 2008, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Paul Ford, Geraldine Melendez and Jeff McMickens as members on the Asheville-Buncombe Fair Housing Commission to serve three year terms, terms to expire December 31, 2010, or until their successors have been appointed.

RESOLUTION BOOK NO. 31 - PAGE 90

I. RESOLUTION NO. 08-35 - RESOLUTION APPOINTING MEMBERS TO THE SUSTAINABLE ADVISORY COMMITTEE ON ENERGY AND THE ENVIRONMENT

Summary: The terms of David Spector, Jonathan Barnes and Vernon Dover (Progress Energy Representative) and Jonathan Barnes as members on the Sustainable Advisory Committee on Energy and the Environment, expired on December 31, 2007.

On February 19, 2008, City Council instructed the City Clerk to prepare the proper paperwork to reappoint David Spector and appoint Gary Hamrick (Progress Energy Representative) as members on the Sustainable Advisory Committee on Energy and the Environment to serve three year terms, terms to expire December 31, 2010, or until their successors have been appointed.

RESOLUTION BOOK NO. 31 - PAGE 91

J. RESOLUTION NO. 08-36 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE TREE COMMISSION

Summary: The terms of Robert Oast and Parker Andes as members on the Asheville Tree Commission, expired on December 31, 2007.

On February 19, 2008, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Robert Oast and Parker Andes as members on the Asheville Tree Commission to serve an additional three year terms, terms to expire December 31, 2010, or until their successors have been appointed.

RESOLUTION BOOK NO. 31 - PAGE 92

K. RESOLUTION AMENDING THE CITY'S 2007-08 CONSOLIDATED ACTION PLAN

This item was removed from the Consent Agenda for discussion and/or an individual vote.

L. RESOLUTION DIRECTING THE CITY CLERK TO PUBLISH A NOTICE OF INTENT REGARDING ENTERING INTO A LEASE WITH THE ASHEVILLE BOARD OF ALCOHOLIC CONTROL FOR PROPERTY LOCATED AT 167 BILTMORE AVENUE

This item was removed from the Consent Agenda for discussion and/or an individual vote.

M. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH KDC IRRIGATION CONTRACTORS FOR THE INSTALLATION OF AN IRRIGATION SYSTEM ON THE FRONT NINE HOLES AT THE ASHEVILLE MUNICIPAL GOLF COURSE

This item was removed from the Consent Agenda for discussion and/or an individual vote.

N. RESOLUTION NO. 08-39 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A DECLARATION OF PERPETUAL LAND USE RESTRICTIONS WITH THE N.C. DEPT. OF ENVIRONMENTAL AND NATURAL RESOURCES FOR 173 S. CHARLOTTE STREET, ASHEVILLE, N.C.

Summary: The consideration of a resolution authorizing the City Manager to enter into a Declaration of Perpetual Land Use Restrictions with the N.C. Dept. of Environmental and Natural Resources (NC DENR) for 173 South Charlotte Street, Asheville, NC 28801.

A small portion of the City's Fleet Management parking lot is located over an old manufactured gas plant (MGP) site which operated in the early 1900's. Under Federal Regulations, Progress Energy is the potential responsible party (PRP) and has worked with the N.C. Department of Environmental and Natural Resources (who administrates applicable Federal Regulations in N.C.) to conduct a site assessment termed "Inactive Hazardous Substance site." Based on the results of the assessment, no removal of material will be necessary; however to insure disclosure to future owner(s), permanent land use restrictions are proscribed by law.

Beginning in 2003, Progress Energy conducted a comprehensive field investigation of the MGP site to include soil borings, temporary monitoring well, and soil sampling.

The Remedial Investigation Report (July 2006) as prepared by Progress Energy and submitted to NC DENR states, "On a site-wide basis soils and groundwater at the site do not exceed residential remedial goals. Since no chemicals of potential concern have been identified at concentrations of concern there is no significant increase in health risk due to historic MGP operations."

Based on the findings of the field investigations, no excavation or material removal is required. With residual amounts of hazardous material, typical remediation call for old abandoned sites to be identified on the property's deed as a former MGP site and impose restriction(s) on the future use of the property.

Specifically, the key restrictions state, "...no construction excavation or disturbance of soils at a depth in excess of five (5) feet below the existing grade, including installation of utilities, shall occur at this site." In light of the close proximity of the site to an active creek (Nasty Branch) at a lower elevation, staff concurs with the reasonableness of the restrictions.

Based upon the findings in the July 2006 Remedial Investigation Report, the final phase consists of a signed agreement titled "Declaration of Perpetual Land Use Restrictions" (DPLUR) to include a survey map which is recorded and attached to the existing deed to the property. Such restrictions will have no impact for most uses if the property is ever sold or re-developed.

The City's Legal staff and NC DENR staff worked together to develop the final language of the DPLUR.

Legal and Public Works staff recommends City Council approve a resolution authorizing the City Manager to enter into a Declaration of Perpetual Land Use Restrictions with the North Carolina Department of Environmental and Natural Resources for 173 South Charlotte Street, Asheville, NC 28801.

RESOLUTION BOOK NO. 31 - PAGE 95

O. RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH THE LAND-OF-SKY REGIONAL COUNCIL IN ORDER TO PASS THROUGH FEDERAL FUNDS FOR TRANSPORTATION PLANNING

This item was removed from the Consent Agenda for discussion and/or an individual vote.

P. BUDGET AMENDMENT FROM THE MANAGER'S CONTINGENCY FUND TO CONDUCT A CITIZENS SURVEY

This item was removed from the Consent Agenda for discussion and/or an individual vote.

Q. RESOLUTION NO. 08-41- RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH MOTOROLA INC. TO PURCHASE AN AUDIO LOGGER RECORDING SYSTEM FOR THE ASHEVILLE POLICE DEPARTMENT'S COMMUNICATIONS UNIT

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with Motorola, Inc. to purchase an Audio Logger Voice Recording System for the Asheville Police Department Communications Unit.

In order to record police radio communications as well as Communications Unit and Central Records Unit phone conversations, it is operationally necessary to purchase a new Audio Logger System. This system can also record on scene fire communications. Our current system is antiquated and is outside any possibility for maintenance. Our maintenance contractor notified is in June of 2007 that they would no longer be able to service the current system because of age and lack of replaceable parts.

For agencies Accredited through the Commission on Accreditation for Law Enforcement Agencies (CALEA), it is required by Standard 81.2.8 for Professional Agencies to have the "capability of immediate playback of recorded telephone and radio conversations while it maintains a continuous recording of radio transmissions and emergency telephone conversations within the communications center." The Asheville Police Department is accredited through CALEA. We are scheduled for re-Accreditation in August of 2008. It also makes good business sense to record phone communications in the event these conversations are needed for criminal investigations and/or internal investigations. Recorded radio and phone communications have been instrumental in providing the citizens of Asheville with quality communications related service for many years. The recorded communications have also provided valuable evidence in many criminal prosecutions.

Proposal: To purchase a modern state of the art Audio Logger system that will not only meet our current needs but will meet our needs in the future. This system must be utilized in the current Unit location as well as have remote or direct capability when the Unit moves to the Joint Communications Center at Erwin Hills. Our chosen vendors of NICE through Motorola and Communications Services, Inc. are already established vendors, have been or are current vendors for the City, and are part of a nationwide as well as worldwide system. This Audio Logger system will allow us to upload radio and phone conversations immediately in real-time in a searchable digital database format for reviewing. We will also have record on demand features for Internal Affairs and Administrative phones when needed to record valuable or evidentiary phone conversations.

Monies are budgeted in our 2007/2008 Fiscal Year Capital Improvement for this purchase.

The Police Department partnered with the City's Information Technology Services Department to seek the best vendor with the best product that would meet our needs now and in the future. Four vendors provided specifications and quotes. One vendor provided the specifications needed. The cost of the Audio Logger is $108,213.00.

Staff recommends City Council approve a resolution authorizing the City Manager to enter into an agreement with Motorola, Inc. to purchase an Audio Logger Voice Recording System for the Asheville Police Department Communications Unit.

RESOLUTION BOOK NO. 31 - PAGE 97

Vice-Mayor Davis said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Russell moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Jones and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

K. RESOLUTION AMENDING THE CITY'S 2007-08 CONSOLIDATED ACTION PLAN

Summary: The consideration of a resolution to amend the City's 2007/2008 Consolidated Action Plan.

The 2007 Action Plan for the Community Development Block Grant (CDBG) and HOME programs included a $10,000 CDBG grant to Neighborhood Housing Services (NHS) for Community Organizing in the West Riverside Weed and Seed area. NHS no longer has the capacity to carry out this program, but, with the support of the NHS board, the Coalition of Asheville Neighborhoods (CAN) is requesting that the grant be transferred to them.

The CAN Board intends to oversee the grant and administer the program. They will hire Barbara Verni Lau, who was formerly NHS's Community Organizer. With additional funding from other sources, CAN will continue work that NHS started in West Riverside and also work with other neighborhoods within Weed and Seed to help them become better organized.

Transferring the existing grant to a different organization does not amount to a "substantial change" requiring a formal amendment to the 2007 Action Plan, but does require Council approval. The Housing & Community Development Committee has reviewed the request and recommends approval.

Pros:

- CAN will carry out the program as proposed in the 2007 Action Plan.

- The proposed community organizer is known to be experienced and capable.
- The activities will support the Weed & Seed program.

Cons:

- To date, CAN has been a volunteer-only organization; it does not have experience in administering federal grants.
- Maintaining the program beyond mid 2008 will require an additional grant in the 2008 Action Plan.

City staff and the Housing & Community Development Committee recommends City Council approve a resolution to amend the City's 2007/2008 Consolidated Action Plan.

Ms. Patty Beaver, representing the Council of Independent Business Owners (CIBO), said that CAN is a volunteer organization that has never been assigned the responsibility of implementing CDBG funds for activities such as the federal Weed and Seed Program. In fact, they have no track record of being able to account for federal dollars. The City would be better served by using one of the established agencies that is accustomed to administering these types of programs. CIBO opposes the transfer of $10,000 to CAN.

There was discussion regarding the transfer of $10,000 to CAN, which has not played this type of role in the past, but which some of Council felt was capable in carrying out this specific grant. In summary, Councilwoman Cape moved to table this action and ask staff to contact other organizations who have experience in administering CDBG grants to see if they would be interested in carrying out this program; and to bring the matter back to Council at their next formal meeting. This motion was seconded by Councilwoman Jones and carried on a 5-1 vote, with Councilman Mumpower voting "no."

L. RESOLUTION NO. 08-37- RESOLUTION DIRECTING THE CITY CLERK TO PUBLISH A NOTICE OF INTENT REGARDING ENTERING INTO A LEASE WITH THE ASHEVILLE BOARD OF ALCOHOLIC CONTROL FOR PROPERTY LOCATED AT 167 BILTMORE AVENUE

Summary: The consideration of a resolution directing the City Clerk to publish a Notice of Intent regarding entering into a lease with the Asheville Board of Alcoholic Control for property located at 167 Biltmore Avenue.

The property at 167 Biltmore Avenue is owned by the City of Asheville and is located on the corner of Biltmore Avenue and South Charlotte Street. In 1985, the City of Asheville leased this property to City of Asheville Board of Alcoholic Control for a retail outlet store and the Board of Alcoholic Control is currently occupying the space on a month-to-month basis.

This proposed lease will enable the Board of Alcoholic Control to maintain the current use as a retail outlet store. There is a provision which allows either party to terminate the agreement upon 180 days notice. The term of the Lease will be for four years. The monthly rent will be $1,006.75 for the first lease year, starting March 2008, (reflecting a 20% increase over the previous rent) and increasing by 20% each year. The Board of Alcoholic Control will carry utilities, water, electricity and gas at its own expense.

Approval of this resolution will authorize the City Clerk to publish a Notice of Intent to enter into the Lease.

Pros:

1. The terms of the lease allow the existing South Charlotte Street ABC store to continue its current operation and perform the governmental function of the sale, control and

regulation of alcoholic beverages and the distribution of its gross receipts according to North Carolina General Statutes.

2. The rental income from this particular property benefits the Community Development Block Grant Program.

Con: There is no negative impact.

Economic Development and Community Development staff recommends City Council approve a resolution directing the City Clerk to publish a Notice of Intent regarding entering into a lease with the Asheville Board of Alcoholic Control for property located at 167 Biltmore Avenue.

Councilman Mumpower explained why he felt that the City should charge the ABC Board fair market value.

Throughout discussion about how the lease amount was determined, Real Estate Manager Nikki Gunter responded to several questions/comments from Council.

ABC Board Chair Charles R. Worley explained the negotiation process with the City and asked for Council's support. He also pointed out that they do make distribution of the profits back to the City.

Councilwoman Cape moved for the adoption of Resolution No. 08-37. This motion was seconded by Councilwoman Jones and carried on a 5-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 31 - PAGE 93

M. RESOLUTION NO. 08-38 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH KDC IRRIGATION CONTRACTORS FOR THE INSTALLATION OF AN IRRIGATION SYSTEM ON THE FRONT NINE HOLES AT THE ASHEVILLE MUNICIPAL GOLF COURSE

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with KDC Irrigation Contractors in an amount not to exceed $220,000 for the installation of an irrigation system on the front nine holes at the Asheville Municipal Golf Course.

In 2007, City Council approved $250,000 as part of the City's FY 07/08 capital improvement budget for the irrigation system and back flow preventers at the Asheville Municipal Golf Course. The City issued a request for proposals for the project and the lowest, responsible bid was received from KDC Irrigation Contractors for a cost of approximately $220,000. This expense, along with the cost of and the installation of a water tap and back flow preventers will total $250,000.

Pros:

- The contract amount plus the cost of the water tap and backflow preventers will not exceed the approved project total of $250,000
- The new irrigation system will replace an old and antiquated system that is manually operated and in continuous need of repair
- The new system will save considerable time and money in the form of staff and repair costs
- The new system will increase water efficiency while improving overall playability of the golf course
- Water and cost savings due the replacement of an old, leaking and obsolete system
- Back flow preventers are required by the Water Department and will put the Golf Course in compliance with public health and safety standards

Con:

- There will be some inconvenience to golfers during the time of construction and installation

Parks and Recreation Department and Cultural Arts Department recommends City Council approve a resolution authorizing the City Manager to enter into a contract with KDC Irrigation Contractors in an amount not to exceed $220,000 for the installation of an irrigation system on the front nine holes at the Asheville Municipal Golf Course.

Councilman Mumpower didn't believe the City should be in the golf business and also didn't support spending $220,000 to upgrade the course. He felt that money could be used for core services, e.g., hiring of 4-5 additional police officers.

Councilwoman Cape said that we must take care of what we own and this upgrade will also increase water efficiency at a time when water is a premier concern in our community.

Vice-Mayor Davis pointed out that the City acquired the golf course when the Water Agreement was dissolved.

Councilwoman Cape moved for the adoption of Resolution No. 08-38. This motion was seconded by Councilwoman Jones and carried on a 5-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 31 - PAGE 94

O. RESOLUTION NO. 08-40 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH THE LAND-OF-SKY REGIONAL COUNCIL IN ORDER TO PASS THROUGH FEDERAL FUNDS FOR TRANSPORTATION PLANNING

Summary: The consideration of a resolution authorizing the City Manager to execute an agreement with the Land of Sky Regional Council in the amount of $300,000 in order to pass-through federal funds for transportation planning.

Since the early 1970s, the City of Asheville has served as the Lead Planning Agency (LPA) for the Metropolitan Planning Organization (MPO). The MPO is part of a federally required process to conduct transportation planning in urban areas. Over the last 30 years the boundaries of the MPO have grown, and the membership of the MPO now includes all of the eighteen local governments in Buncombe, Haywood, and Henderson Counties. Based on this regional focus, and other factors listed below, it seems likely that the LPA function will move to the Land of Sky Regional Council.

The MPO's governing body, the Transportation Advisory Committee, has not taken final action on the matter, but based on all of the initial feedback, this change seems almost certain. The Land of Sky Regional Council will be required to hire staff and begin assuming the role of managing the MPO. To aid in this transition, staff is recommending a temporary contract arrangement, whereby the LOSRC can begin accessing the federal transportation planning funds in order to hire staff to operate the MPO.

The move of the LPA will require an update to the Memorandum of Understanding between the eighteen local governments of the MPO and the State of North Carolina. This update process will take time. In the interim we plan to begin transferring the planning functions to LOSRC staff.

Facts:

o The MPO receives federal funds through the North Carolina Department of Transportation.

- There is currently a reserve balance of funds that are available for MPO planning.
- The funds are 80% federal with a 20% local match. The match is provided by the local government members of the MPO and is split based on population (currently paid by the five largest local governments).
- The Land of Sky Regional Council currently provides the staff for the Rural Planning Organization (RPO).

Pros:
- Moving the staff to Land of Sky Regional Council will move a regional function to a regional agency.
- It will consolidate both urban (MPO) and rural (RPO) regional transportation planning at one agency.
- Possible efficiencies of having all regional transportation staff at one agency and joint meetings of the MPO and RPO.
- LOSRC has a good track record of running the RPO.
- The funding source is steady, and there are reserve funds available to ease the transition.

Other Considerations:
- The transition will require re-adoption of the Memorandum of Understanding by all eighteen local governments in the MPO.
- City of Asheville has historically covered the costs of office space, equipment and support services.
- LOSRC will have to hire new staff, purchase office equipment, set up procedures etc.
- There are many partners in the MPO and RPO process that will need to adjust to a new MPO structure.

Staff recommends City Council approve a resolution authorizing the City Manager to execute an agreement with the Land of Sky Regional Council in the amount of $300,000 in order to pass-through federal funds for transportation planning.

Councilman Mumpower explained why he felt the system is so layered with bureaucracy and complex that accountability is almost impossible.

Councilman Newman said that this will make transportation planning in our area more efficient and less bureaucratic. There is a lot of talk about the need for regional planning in the area and this is a very specific step in that direction.

Councilman Newman moved for the adoption of Resolution No. 08-40. This motion was seconded by Councilwoman Jones and carried on a 5-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 31 - PAGE 96

P. ORDINANCE NO. 3586 - BUDGET AMENDMENT FROM THE MANAGER'S CONTINGENCY FUND TO CONDUCT A CITIZENS SURVEY

Summary: The consideration of a budget amendment in the amount of $23,200 from the manager's contingency fund to conduct a citizen survey.

Citizen surveys are used to set performance standards for local government, measure successes and identify opportunities to improve. Surveys offer a useful way to hear from residents who may be too busy to actively participate in community forums, Council meetings, public meetings and other opportunities for public engagement. Results from a survey will be used to better understand what citizens think about municipal services and communications efforts. Survey results will also be a benchmarking tool that will allow management and Council to look at trends over time as well as to compare to results in other communities.

National Research Center, Inc., a research and evaluation firm focusing on the information requirements of the public sector, has partnered with the International City/County Management Association (ICMA) to create The National Citizen Survey™, a uniform survey tool used by diverse local jurisdictions across the U.S. to assess resident satisfaction with community amenities and government service provision.

The National Citizen Survey (NCS) offers a customizable mail survey that includes 42 service ratings on the standard survey. Three optional policy questions are included as part of the basic service, along with statistical analysis of results, a written report, and comparative norms from aggregated results in other communities.

Also included are 400 telephone interviews for additional data collection; surveys in Spanish; crosstabs by geographic variable and by four demographic variables; one custom open-ended question; and an on-site presentation of results by a NCS representative. NCS guarantees a margin of error of no more than +/- 5%.

The total cost for the survey is $23,200. Funding will come from the manager's contingency account. If approved, pre-notification postcards and then the survey will be mailed in April. Data will be collected and processed in May, and the city will receive a draft report in early June. The final report of survey results will be available the third week of June.

A sample has been distributed to department directors for input via the department communications liaisons.

Pros:
- Allows staff to capture performance measurements directly related to City Council's strategic plan and department business plans.
- Improves management of government services by identifying strengths and areas for improvement.
- Furthers public confidence in local government.
- Provides the insight gained from collective opinions.
- Allows opportunities for benchmarking and tracking trends in citizen satisfaction.
- Provides guidance for improving communications to residents.

Con:
- The cost of the survey.

Staff recommends City Council approve a budget amendment in the amount of $23,200 from the manager's contingency fund to conduct a citizen survey.

Councilman Mumpower felt spending $23,200 on a survey is a misinvestment of precious dollars. He questioned, under existing circumstances, if we have the ability to process the information we already have in hand on our services.

City Manager Jackson explained how the survey is competitive intelligence. This is how we determine whether or not we are getting our money's worth, and the true measure of what our quality is (the same way that private businesses do market research). This is an effort to engage a firm that will not only bring us our survey information but also give us baseline information about how our results compare to like measures of service in other communities.

Councilwoman Cape felt the $23,200 will be money well spent if the community participates in the survey, which she urged them to do.

Vice-Mayor Davis felt the City currently obtains a lot of public information via forums, etc. and was not sure that spending $23,200 on a survey at this time was the best thing to do.

Councilman Newman moved for the adoption of Ordinance No. 3586. This motion was seconded by Councilwoman Jones and carried on a 4-2 vote, with Vice-Mayor Davis and Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 24 - PAGE 344

III. PRESENTATIONS & REPORTS:

A. BUNCOMBE COUNTY TOURISM DEVELOPMENT AUTHORITY ANNUAL REPORT

Mr. Craig Madison, Chairman of the Buncombe County Tourism Development Authority (TDA), presented City Council with the TDA's annual report. Using graphs, he explained the overnight leisure visitation to Asheville area and visitor spending (increased 24% since 1998). He said the typical Asheville visitors are (1) age: 50s; (2) household income of $100,000+; (3) college or post-graduate degree; (4) no children in the home (i.e., empty nesters); (5) more than half employed full-time, 1/3 retired; (6) married and traveling as a couple; and (7) have internet access.

Using graphs, Mr. Kelly Miller, Senior Vice-President and Executive Director of the Convention & Visitors Bureau. explained the anticipated growth in hotel rooms; a comparative cities lodging data graph; and the economic impact of tourism (direct and indirect).

The total tax visitors pay on accommodations: 4% - Occupancy tax (3% for marketing and advertising and 1% for product development; and 6.75% - Sales tax (earmarked for state and local government) for a total of 10.75% tax paid on lodging.

Regarding tax returns to local government, (1) Buncombe County government estimates that visitors to the Asheville area generate one third of all retail sales; and (2) nearly $40 Million goes back to local government in combined sales and property taxes that are the result of tourism.

Regarding the labor impact, (1) more than 18,000 people are employed in hospitality-related jobs in Buncombe County; and (2) estimated direct labor income impact is more than $473 Million.

Tourism product funds awarded through 2007 equal $9,033,500.

Projects funded by Buncombe County lodging industry occupancy tax (2007 cycle) include: Pack Square Park - $1,500,000; Asheville Art Museum - $1,000,000; The Health Adventure (momentum) $1,000,000; Veteran's War Memorial - $67,000; and Civil War Trails - $16,500 - for a total of $3,583,500.

Projects funded by Buncombe County lodging industry occupancy tax (previous cycles) include: John B. Lewis Soccer Complex at Azalea Park - $800,000; Grove Arcade Public Market - $500,000; Bonsai Garden North Carolina Arboretum - $750,000; Asheville Visitor Center - $750,000; Pack Square Park - $500,000; and the Health Adventure - $500,000 - for a total of $3,800,000.

Regarding the Buncombe County Wayfinding Project, the TDA allocated $1.65 Million for wayfinding. One Million, six hundred and fifty thousand was recommended by the Tourism Product Development Committee and approved by the TDA in December 2007 to fund county-wide wayfinding in partnership with the City of Asheville, Weaverville, Woodfin, Black Mountain, Montreat and Buncombe County.

He updated Council on the wayfinding project as follows: (1) working closely with the N.C. Dept. of Transportation (NCDOT) on established design guidelines and encroachment process for sign located on NCDOT roads in the county; (2) finalizing locations of pedestrian signs and kiosks and gateways; and (3) project may be phased starting with the fabrication and installation of wayfinding elements in the downtown followed by regional installation.

The Assistant Vice-President and Director of Marketing and PR said that tourism advertising efforts total $3.06 Million in net media. New tourism ad campaigns include (1) Atlanta Campaign launched in August 2007; (2) Romance Campaign launched in fall of 2007; (3) Epicurean Campaign launched in January of 2008; and (4) a new overall campaign to be launched in late 2008.

Councilwoman Cape confirmed that visitors seek out smaller businesses. She also urged that when the Chamber does their marketing efforts to invite people to Asheville that they also add some awareness to slow down while traveling through Asheville.

Councilwoman Jones highlighted the great partnership with the Chamber of Commerce on the Wayfinding Project.

On behalf of City Council, Vice-Mayor Davis thanked the TDA for their concise presentation and for their efforts on behalf of the City of Asheville.

B. CLEAN AIR COMMUNITY TRUST

Mr. Dan Leroy, with the Clean Air Community Trust, explained the Climate Corps program. He explained what needs the program hopes to address, what the program will look like, and how can the City of Asheville get involved.

Mr. Leroy explained what a Corps is. We would like to focus a Corps in Asheville that will focus on climate change. There are 113 Corps in the United States and there is only one operating in North Carolina. The benefits include service-based education, job skills, leadership and life skills, stipends, education awards, environmental and community service, and impact.

He explained why we need a Climate Corps. Need #1 - Tangible projects that have a meaningful impact on causes and consequences of climate change. Some projects include: energy efficiency/green building; clean energy and fuels; transportation; ecosystem services; sustainable agriculture; and natural disaster response. These are some of the types of projects that can be done to address some of these problems: green building and design; installing solar panels or small wind turbines at city buildings, schools; energy audits; weatherization projects; native landscaping; planting trees; controlling erosion; restoring wildlife habitat; monitoring air and water quality; developing bike-friendly commuter corridors; organizing ride-shares; processing and distributing bio-diesel; developing community and school partners; repairing damage and helping victims after floods; and community education and engagement.

Need #2 - Quality training for green-collar jobs. The following are sectors that have green-collar jobs: bicycle repair and bike delivery services; mechanic, production and gas station jobs related to bio-diesel, vegetable oil and other alternative fuels; energy retrofits to increase energy efficiency and conservation; organic/sustainable food production; furniture building with environmentally harvested or reused wood; green building; green waste composting on a large scale; hauling and reuse of construction and demolition materials; hazardous materials clean-up; green (sustainable) landscaping; manufacturing jobs related to large scale production of a wide range of appropriate technologies; producing products made from recycled, non-toxic materials; non-toxic cleaning services; parks and open space maintenance and expansion; printing with non-toxic inks and dyes and recycled papers; public transit jobs; recycling; solar installation and maintenance; tree cutting and pruning, peri-urban and urban agriculture; water retrofits to increase water efficiency and conservation; and whole home performance (i.e., HVAC, attic

insulation, weatherization, etc.) Key findings are that (1) green-collar jobs are good jobs; (2) green-collar jobs are well-suited for workers with barriers to employment, and these workers are interested in green-collar jobs; and (3) green-collar job sectors are growing.

In Asheville (1) wages are low, poverty is high - especially for workers with barriers to employment; (2) tremendous growth in green industry; (3) 30,000 green jobs in North Carolina; and (4) 69 businesses registered in local green business directory.

Need #3 - Sense of hope.

Corps members receive stipends, academic credit, skills certification and tuition awards. Mid-year Corps members select a career "pathway" according to their interests.

He explained that the City of Asheville can get involved by (1) engaging Corps members in the City's sustainability projects; (2) help host Climate Corps members as interns; (3) funding or in-kind contributions; and (4) leadership.

In response to Councilwoman Jones, Mr. Leroy said that the target age group is the 17-20 year olds.

Through a consensus of Council, which was initiated by Councilwoman Cape, City Manager Jackson said that he will report back to Council in the budget process of how we might connect and expand the City of Asheville Youth Leadership Academy (CAYLA) into the Climate Corps Program and/or how the City can support the Climate Corps Program in some fashion.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER ADOPTION OF THE CITY OF ASHEVILLE'S COMPREHENSIVE BICYCLE PLAN

RESOLUTION NO. 08-42- RESOLUTION ADOPTING THE CITY OF ASHEVILLE'S COMPREHENSIVE BICYCLE PLAN

Vice-Mayor Davis opened the public hearing at 6:33 p.m.

Transportation Planner Dan Baechtold said that this is the consideration of a resolution adopting the City of Asheville's Comprehensive Bicycle Plan. This public hearing was advertised on February 15 and 22, 2008.

Mr. Baechtold said that the planning process was based on direction from City Council. Staff worked with the N.C. Dept. of Transportation (NCDOT) to jointly fund the development of a comprehensive bicycle plan for the City. The City hired the firm Toole Design Group, assisted by Livable Streets, Inc. Both firms are nationally recognized experts in bicycle planning. This is the City's first bicycle plan.

The City, NCDOT, and the consultants worked with a steering committee to guide development of the plan and gather public input. There was robust public participation in the creation of this plan. The first public open house was held in March 2007 and was attended by over 100 people. That meeting was followed by an online questionnaire. Though it was not a statistical sample, more than 800 responses were received.

The consultants researched local conditions, measured street widths, and consulted with the steering committee to develop draft recommendations. The recommendations were presented to the steering committee, and then to about 75 members of the public at a meeting in July of 2007. Based on feedback from the public, the consultants improved and refined the plan. Since

late December, staff has gathered additional public input on the final draft of the bicycle plan. A formal public comment period was open for 30 days in January and early February.

Cost of the Plan: The total cost for developing the plan was $47,915. The State contributed $24,000. The Blue Ridge Bicycle Club has pledged $1,000. The remainder, $22,915, was paid for the by the City. The State has an interest in seeing these plans completed because the recommendations are used in the State's Comprehensive Transportation Plans.

Plan Recommendations: The Comprehensive Bicycle plan takes a long-range approach toward improving conditions for bicycling in Asheville. The goal of the plan is to improve conditions for both cyclists and motorists by creating a safe and accessible network of bicycle facilities. The plan also contains recommendations for facility design, education activities, enforcement, and other public policies that affect bicycle transportation.

Some recommendations in the plan could happen in the short term, at a relatively low cost. Other recommendations in the plan could be implemented as stand-alone projects, or in conjunction with street re-paving or widening projects. Because of this approach, the plan does not include an estimate of the total cost of implementation. Instead, the plan provides typical costs for various types of improvements. Many of the plan recommendations will be implemented over time, in conjunction with other projects. The plan does recommend that the City begin committing local funds toward making bicycle improvements.

Both City streets and State roads were analyzed to look for opportunities to improve conditions for bicycling. The NCDOT has been involved with plan development, but will need to review and approve any changes to their streets as specific changes are proposed. The NCDOT will analyze projects on a case- by-case basis to ensure that the streets continue to adequately meet the needs of motorists. Similarly, the City will want to closely evaluate each project to ensure a balance between motorist, bicyclist, and pedestrian needs, as well as transit and on-street parking needs. As we look to create "complete" streets for all of these users, this plan will be used as a reference to determine the appropriate recommendation for bicyclists.

The recommendations in this plan support the Asheville Greenway Master Plan and updated greenway priorities, and the 2025 City Development Plan. The bicycle plan draws from and references these plans. This plan does not take the place of the greenways plan. These plans are intended to complement one another.

Staff recommends City Council approve a resolution adopting the Comprehensive Bicycle Plan for the City of Asheville.

Mr. Dan Goodman, Transportation Designer with the Toole Design Group, explained the project goals as follows: (1) provide transportation alternatives; (2) create continuous linear connections; (3) provide facilities for the full range of users; (4) increase safety and mobility; (5) fully utilize existing pavement; (6) coordinate City, County and private-sector efforts; (7) prioritize improvements; (8) identify educational and awareness efforts; and (9) pursue bicycle-friendly policies and maintenance procedures.

The overview of the study process includes: (1) public input (a) public open house on March 8, 2007; and (b) public meeting on July 26, 2007; (2) online questionnaire (a) available for approximately one month; and (b) more than 830 people participated; (3) steering committee - steering committee meetings held on February 6, 2007, and July 25, 2007; and (4) background data collection and field analysis.

A field analysis was performed on the number of lanes, lane width, speed limit, parking, existing bike lanes, curb and gutter, sidewalks, buildable shoulders, recommended facilities and required actions.

He then explained a drawing of shared lane markings.

Using a map, he showed the bicycle route network consisting of bike lanes - 43 miles; climbing lanes - 17 miles; shared lane markings - 21 miles; shared roadways - 64 miles; striped shoulders - 21 miles; range of improvements - 15 miles; for a total bicycle network of 181 miles.

Using a Bicycle Action Map, he outlined the following: stripe/add marking - 25 miles; lane diet - 28 miles; road diet - 2 miles; remove parking - 1 mile; add paved shoulder - 39 miles; and range of improvement needed - 15 miles.

He explained that road diets go from, for example, 4 lanes to 3 lanes. Lane diets are keeping the same number of lanes, but narrowing them.

Recommendations: (1) improve conditions on arterial streets; (2) provide better direction through intersections; (3) provide better connections and access to points outside of Asheville; (4) incorporate greenway trails into the bicycle network; (5) pursue key operational improvements; (6) improve bicycle accommodations on bridges; (7) improve bicycle facility maintenance; (8) develop a signed bicycle route system; (9) improve conditions at interstate entrance ramps and railroad crossings; and (10) provide ancillary facilities.

A policy recommendation would be to improve coordination within the City, between the City and the NCDOT and with upcoming projects, ongoing planning efforts, etc. Regarding education and awareness, it is recommended to (1) pursue partnerships; (2) provide opportunities to learn about new bicycle facilities; and (3) provide educational opportunities focusing on safe bicycle behaviors, laws, etc.

Regarding implementation, short-term would be to complete key safety improvements; implement initial set of bicycle facilities; pursue pilot projects; coordinate processes, analyze bike/greenway connections; plan and budget. Medium and long-term implementations would include major corridors and key linear connections.

The following individuals spoke in support of Council's adoption of the Comprehensive Bicycle Plan for various reasons, most notably for the safety of the bicyclists and the health benefits associated with bicycling:

Ms. Claudia Nix, representing the Bicycle Pedestrian Task Force
Ms. Terry March, Buncombe County Health Center
Mr. Matt Johnson, owner of a bicycle shop in Asheville (presented a petition - that goes further than just the bicycle plan - representing 6,306 people)
Mr. Rich Mathews, parent
Mr. Robbie Sweetser
Mr. Michael Soule, founder of Asheville on Bikes
Mr. Jim Barton
Ms. Karen Austin, Chair of the Asheville Transit Commission
Mr. Wes Miller
Ms. Linda Giltz, Chair of the Asheville Greenway Commission
Mr. Yuri Kosien, member of the Steering Committee

Mr. and Mrs. Harry Vess, Swannanoa residents, felt that this Bicycle Plan is good; however, they were concerned of where the money would come from to implement the plan. Ms. Vess suggested the bikers help contribute to the maintenance of the highways as well as the people who drive on those highways.

Vice-Mayor Davis closed the public hearing at 7:35 p.m.

Councilwoman Cape moved for the adoption of Resolution No. 08-42. This motion was seconded by Councilwoman Jones.

At the suggestion of Councilman Newman, Councilwoman Cape and Councilwoman Jones agreed to accept a friendly amendment to move changing the on-street parking on College Street from short-term recommendations to medium-term recommendations or whenever the project re-striping is necessary, since it was not long that we made changes on College Street.

Councilman Russell agreed that the plan is good; however, he was concerned about working this plan into our budget. He felt we need to make strides to improve bicycling in Asheville and still take into account road expansion plans.

Mr. Baechtold said that each recommendation in the Plan will have to be considered on a case by case basis. He also agreed with moving the College Street recommendation into the future. With any of the recommendations there will be a process of balancing it, especially in the case of a road diet, which will require a traffic analysis and long-term projections to make sure we meet the needs of all the users - motorists and bicyclists. Even though they do have the per mile costs in the plan, a lot of the actual costs will depend on how aggressively the City wants to pursue the actions in the plan - and, waiting for opportunities is one way to do it. He hoped that in the short-term recommendations there are some that staff will pull out and recommend to the Department Directors and the City Manager, as part of the Capital Improvements Plan, so Council can weight those against the other needs in the City.

In response to Councilman Russell's comment about hoping that the NCDOT will help fund bicycle improvements in the roads they control, Mr. Baechtold said that a few years ago the General Assembly changed the laws for transportation planning and moved away from just having a highway thoroughfare plan to having a multi-modal transportation plan, which includes bicycles, pedestrians, highways, public transportation, etc. When the state is doing a roadway widening project, they will now look at the multi-modal transportation plan and incorporate those treatments for very little additional cost. Currently, on road widening projects, the state routinely includes a wider outside lane for bicycles. But part of what this Plan does for us says that in a lot of those cases that wider outside lane isn't the most appropriate treatment for that road. Now that we have a Plan, when the NCDOT is doing a roadway widening project, we can look at our Bicycle Plan and let them know what the appropriate treatment is.

Councilwoman Cape said that the Plan gives us a road map with which to make decisions in the future.

Councilman Mumpower explained that a plan without a budget and action steps is fantasy, and until we get safe routes to school for our children, it's wrong to invest our energies in nice things.

Councilwoman Jones supported the Plan and reviewing it in the budget process. She also urged the bicycling community to spread the word about enforcing the rules of the road.

In response to Councilman Russell, City Manager Jackson said that the next step will be for staff to put together short term plans, as we do for all our capital projects. With the Bicycle Plan being adopted as part of the 5-year Capital Improvement Plan (CIP), there will be conscious decisions made by staff to put forward recommendations in every budget cycle. As the Bicycle Plan is considered in the CIP Council will then allocate funds for the Plan and then projects will be prioritized within that allocation.

Vice-Mayor Davis said it was clear that a lot of work has gone into this Plan, but also noted the limited dollars the City has to invest.

Vice-Mayor Davis said that members of Council have previously received a copy of the resolution and it would not be read.

The amended motion made by Councilwoman Cape and seconded by Councilwoman Jones carried on a 5-1 vote, with Councilman Mumpower voting "no."

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At 8:00 p.m., Vice-Mayor Davis announced a 20-minute recess.

B. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR THE DEERFIELD EPISCOPAL RETIREMENT COMMUNITY PROJECT LOCATED AT 1617 HENDERSONVILLE ROAD FOR AN EXPANSION AND RENOVATION TO THE EXISTING FACILITY, AND A REQUEST FOR MODIFICATIONS TO HEIGHT AND LANDSCAPING STANDARDS

ORDINANCE NO. 3587- ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR THE DEERFIELD EPISCOPAL RETIREMENT COMMUNITY PROJECT LOCATED AT 1617 HENDERSONVILLE ROAD FOR AN EXPANSION AND RENOVATION TO THE EXISTING FACILITY, AND A REQUEST FOR MODIFICATIONS TO HEIGHT AND LANDSCAPING STANDARDS

Deputy City Clerk Colson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Vice-Mayor Davis opened the public hearing at 8:23 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Nathan Pennington submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Pennington said that this is the consideration of the issuance of a conditional use permit for the Deerfield Episcopal Retirement Community project located at 1617 Hendersonville Road for an expansion and renovation to the existing facility, and a request for modifications to height and landscaping standards.

Urban Planner Nathan Pennington oriented the Commission to the site location and said this review concerns a proposed expansion to the existing Deerfield Retirement Community development (City Exhibit 4 - Aerial Map). The facility has been in existence since approximately 1955, and in 1995 underwent a major expansion after receiving site plan approval and vested rights from City Council. Two of the buildings proposed on the site plan in 1995 were not constructed within the vesting period of two years and the order subsequently expired in 1997.

The following breakdown provides a summary of the proposed improvements to the site:

- An independent living facility, consisting of 82 new units and comprising 172,679 square feet.
- The community center renovation and addition of 526 square feet.
- An addition to the assisted living wing consisting of 20 new units and 56,262 square feet.
- An addition to the skilled nursing wing consisting of 14 new units and 24,870 square feet. (City Exhibit 5 - Site Plan)

The total new square footage of the proposed facility expansion is 254,337 square feet and 116 units. Other proposed improvements include internal private roads, parking areas, sidewalks, utility infrastructure and landscaping.

Pursuant to Section 7-5-9(a)(1)(a)(2) of the Unified Development Ordinance (UDO), office or institutional buildings, structures, or developments with a gross floor area of more than 100,000 square feet are reviewed as a Level III Site Plan Review.

The northwestern quadrant of the subject property falls within 1,320 feet of the centerline of the Blue Ridge Parkway and is therefore subject to the applicable provisions of the Blue Ridge Parkway Overlay District. The applicable provisions as they apply to this project are that no building or structure shall be constructed with a height in excess of 40 feet within this area, and any structure other than single-family residential that will be visible from the parkway roadway must be further buffered by landscaping. The proposed skilled nursing wing addition and a small portion of the assisted living wing are located within the overlay district. The additions are designed so they will not exceed 40 feet in height and the site is buffered by existing vegetation that meets and exceeds the required 30 foot Class "B" bufferyard requirement along the northwestern property line bordering the Parkway.

Mr. Pennington explained in detail the applicant's request of three (3) modifications to the site development standards of the UDO pursuant to Section 7-5-5(h) (City Exhibit 6). The proposed independent living facility is sited in the southern quadrant of the subject property that is split zoned INST and RM-16. Pursuant to Section 7-11-2(d)(1), bufferyards shall be required for proposed developments adjacent to parcels of dissimilar zoning designations to provide a transition between districts of varying intensities. Therefore, the applicant is requesting a modification to apply the required buffer along the western perimeter of the property bordering the Ramble subdivision. This request would alleviate the duplicate effect of having to buffer both the internal zoning designations of RM-16/INST and perimeter designations of INST/RS-2 & RS-4. The second request involves a modification to building height. The maximum allowable building height in RM-16 is 40 feet. There is no maximum building height within the INST zoning district except within 100 feet of a residentially zoned area. Buildings that fall within this area are subject to the height limitations established in the least restrictive adjacent residential zone, thereby limiting the overall height in this area to 40 feet due to the proximity of the RM-16 and RS-2 zoning districts. The applicant is requesting a 7 foot 8 inch modification to the 40 foot maximum height allowance in order to match the existing independent living building constructed in 1995 (City Exhibit 7). The third modification request is for a modification (interior) of 2 feet for the addition to the assisted living wing for a total height of 42 feet (City Exhibit 8). No increase in height is being requested in the Blue Ridge Parkway Overlay portion of the property.

While the retirement community does not offer rents that are consistent with the City's affordability guidelines in the traditional sense, other financial assistance opportunities are made available to their residents. Such programs include assistance for residents who have outlived their financial resources; Deerfield has assisted approximately six residents per year for the past 10 years.

The applicant has expressed a willingness to institute green building techniques into the construction of the project.

The subject site is located off of Hendersonville Road and Racquet Club Road in south Asheville within the City's corporate limits. The property consists of one split zoned both RM-16 (Residential Multi-Family High Density District) and INST (Institutional) and is comprised of 109.76 acres according to Buncombe County tax records. The subject site is bounded to the north by the Blue Ridge Parkway, a single-family residence and an office, in which only the residence is zoned RM-16 due to the other property being located in Biltmore Forest. To the east the property is bounded by single-family residences in the Limestone Township, apartments and tennis club zoned RM-16 and a shopping center separated by Hendersonville Road zoned HB. The property is bounded to the south by single-family residences, apartments/tennis club/condos and a bank zoned RS-4/Limestone Township, RM-16 and HB respectively and to the west by single-family residences located in Biltmore Forest zoning and RS-4.

The RM-16 zoning district was created to permit a full range of high density multi-family housing types along with limited institutional, public and commercial uses appropriate within high density residential areas. It is intended that this district be located near employment centers, shopping facilities, roads and other urban infrastructure capable of handling the demand generated by high density residential development. The Institutional zoning district was created to reserve land for the development of major educational facilities, major medical facilities and other complementary and supporting uses such as health related developments, office developments, and public services.

At their January 7, 2008, meeting the Technical Review Committee (TRC) approved this project subject to the conditions in the TRC staff report. As of the time of this writing, staff has received two communications from adjacent property owners concerning height, site lighting and the location of the access road servicing the independent living building.

At their February 6, 2008, meeting the Planning and Zoning Commission approved this project subject to the conditions in the staff report with support for the requested landscaping and height modifications and the added condition that a transit stop be added along Hendersonville Road. Some citizens voiced concern about the proposed height of the independent living facility and proximity to the adjacent residential subdivision.

City Council must take formal action as set forth in Section 7-5-5(e)(3) of the UDO, and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of the case pursuant to Section 7-16-2(c) of the UDO. Staff's review indicates that all seven standards are met as proposed in the site plan.

1. That the proposed use or development of the land will not materially endanger the public health or safety.

   This has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and all other applicable laws and standards that protect the public health and safety.

2. That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.

The proposed use is compatible with the surrounding natural features and topography. The proposed additions are clustered around the existing building complex so as to minimize overall grading.

3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.

   The proposed development is compatible with the existing use of the property and is proposed to match the existing building designs in terms of architectural consistency. Staff feels that the proposed project would have no discernible effect on surrounding property values.

4. That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

   There are a variety of commercial, institutional and residential developments in the area that would be consistent with the proposed development. The density of the project (existing & new) is approximately 4.3 dwelling units per acre. The zoning of the site is RM-16, and the proposal does not require density bonuses or special incentives to build this project. The proposed use is in harmony with the scale, bulk, coverage, density and character of the underlying area. The clustering of the additions to the existing building complex and the preservation of over 16.46 acres of open space on the site will assist the development in blending into the site in a similar fashion as other developments in the area have done.

5. That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.

   The application of high density infill development and job growth supports several goals and objectives as described in both the *Asheville City Development Plan 2025* and the *Strategic Operating Plan.*

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

   Development on the site will require final technical approval from all applicable departments including Water Resources, MSD, Engineering, Fire and Building Safety. The conceptual plans for the development have been reviewed by the City's Technical Review Committee, which found that adequate services and facilities are available for the proposed development.

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

   The proposed project has been reviewed by the City's traffic engineer, and while a traffic impact analysis is required, the project is not expected to cause undue traffic congestion or create a traffic hazard.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:

- The proposed expansion is consistent with the established use of this property as a retirement/assisted living facility.
- The project supports the City's comprehensive plan as indicated in this report and is adequately served by needed infrastructure.

Cons:

- Some citizens may view the proposed height as not being in character with the surrounding residential neighborhood.
- Intensity of use is not typical of surrounding residential area (however the impact is somewhat mitigated by the distance between buildings).

Based on the above findings and the analysis provided in the report, staff finds this request with the three modifications to landscaping and height standards to be reasonable and recommends approval of the conditional use permit with the conditions outlined in the TRC report, and the conditions as follows: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; (5) This project will undergo final review by the TRC prior to issuance of any required permits; and (6) A transit stop be added on Hendersonville Road.

Mr. W. Louis Bissette, Jr., representing Deerfield Episcopal Retirement Community Inc., gave a brief history of the Deerfield community. He said Deerfield completed its Master Plan in 1995 and the project is exactly like it is today. He said that in January 2005 Deerfield purchased 30 acres of additional property from the developer of the Ramble (Biltmore Farms) just in order for it to be able to move its independent living building footprint over. He said the existing independent living buildings are exactly the same height as the building they are requesting. They are requesting a 7-foot 8-inch modification to the height of the independent living building so that it will be like the buildings adjacent to it. It would be possible to decrease the height of the proposed independent living building to 40 feet, but that would require a much larger footprint which could actually be built up to 65 feet from the Ramble property line, instead of the 100 feet, and it would be much more of an imposing structure. In the past few weeks, Deerfield has met with the 5 adjacent residents in the Ramble which are impacted. Deerfield has pledged to do whatever it can to enhance the buffer areas and presented a plan, in conjunction with the Ramble developer that they hope will alleviate some of their buffering concerns. The proposed independent living facility location will also provide the connectivity that is required for a senior population. He explained that the only reason why a 7-foot 8-inch modification request is being requested is because of the RM-16 designation on Deerfield's own property, not because the Ramble property is designated RS-2. He explained that the other 2-foot modification, due to the Blue Ridge Overlay District, does not affect the exterior of the assisted living facility in anyway. Instead of an 8-foot ceiling in the dining room, they are requesting a 10-foot ceiling. He noted that you cannot see the assisted living facility from the Blue Ridge Parkway.

Mr. Jose' Montalvo, architect for the project, used diagrams and pictures to emphasize how Deerfield wants to be good stewards of the land and to minimize the impact on the environment - which the proposed independent living facility footprint does (Applicant Exhibit 1). He said the placement of the proposed independent living facility improves the site lines of the existing facilities and the loop road will provide connectivity for the senior citizens, increase additional fire safety and better circulation to the site. It also follows an existing roadway to minimize the impact to the landscape.

Mr. Tom Leslie, property owner in the Ramble who lives across the street and slightly down from the proposed independent living facility, felt that Deerfield should not be allowed to have a modification to their proposed building and to just build the facility with 4 stories and not 5. He said that a 5 story building will have a significant visual impact on the Ramble property owners.

The following individuals spoke in support of the Deerfield conditional use permit, along with the modifications requested, for various reasons, some being but are not limited to, the good work and generosity of Deerfield to the actual residents and community at large:

Mr. Jim Torpey, President of Council of Aging of Buncombe County
Ms. Marilyn Carter, Director of Meals on Wheels
Mr. Walter Horner, resident at Deerfield
The Reverend Morgan Gardner, Chaplain of St. Giles Chapel at Deerfield
Mr. Jim Fitz, son of a resident at Deerfield

Upon cross examination by Mr. Bissette, Mr. Leslie pointed out where he lived in connection with the proposed independent living facility and said that he is representing Mr. Alex Munro who is directly adjacent to the property. Mr. Bissette said that it was his understanding that Deerfield met with Mr. Munro and that his concerns were satisfied.

After rebuttal, Vice-Mayor Davis closed the public hearing at 9:15 p.m.

Even though Councilman Mumpower felt Deerfield is a facility for people with means, the facility is a non-profit and pays no fees for City services, e.g., police, fire, etc., which he thinks is unfair. He believed that should be changed at the state level. However, he does believe the facility is an asset and in a growing City with limited space, Deerfield is trying to maximize the use of their property. He felt that 7 feet 8 inches is not an unreasonable accommodation and they have made an effort to accommodate the Ramble residents.

Councilman Mumpower said that based on the information provided to City Council at this hearing, he moved to adopt Ordinance No. 3587, granting a conditional use permit for the project identified as Deerfield Episcopal Retirement Community as proposed with the three modifications to landscaping and height standards and the conditions as follows: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; (5) This project will undergo final review by the TRC prior to issuance of any required permits; and (6) A bus transit shelter must be installed along Hendersonville Road. This motion was seconded by Councilman Russell and carried unanimously.

ORDINANCE BOOK NO. 24 - PAGE 346

V. UNFINISHED BUSINESS:

VI. NEW BUSINESS:

A. RESOLUTION NO. 08-43- RESOLUTION OF CONSIDERATION IDENTIFYING AREAS WITH POTENTIAL FOR FUTURE ANNEXATION

Urban Planner Julia Cogburn said that this is the consideration of a Resolution of Consideration identifying areas with potential for future annexation.

State law provides that a Resolution of Consideration may be adopted by cities as a preliminary step in the annexation process. The Resolution of Consideration serves the purpose of providing citizens with advance notice that certain areas in proximity to the City may, within the reasonably near future, be subject to annexation. After being in effect for at least one (1) year, the Resolution of Consideration also has the benefit of reducing the time period required between adoption of any annexation ordinance and the effective date of that ordinance from a minimum of one (1) year to a minimum of seventy (70) days. Each Resolution of Consideration is effective for two (2) years. The initial City of Asheville Resolution of Consideration was adopted on April 9, 2002 and revised maps were adopted by Council on March 9, 2004 and March 7, 2006. It is now time to consider the next resolution.

Urban Planner Blake Esselstyn said that the map staff has prepared to accompany this resolution utilizes the same perimeter boundaries as were approved by Council in 2006, minus any areas that have been annexed by the City of Asheville or another jurisdiction since that time. In addition, a small region which has been "landlocked" by a Woodfin annexation and has therefore been made inaccessible for annexation by the City of Asheville has been removed from the area. In 2006, as well as today, these are areas with the potential for urbanization, such as the areas along major thoroughfares, areas within the City's extraterritorial jurisdiction, areas with existing infrastructure or areas where utility extensions are feasible and other areas with potential for urban development.

The map includes many areas that may not experience urban development in the near future, because the boundaries are drawn to be expansive enough so that any possible near term (1-5 years) annexation areas will be within the boundaries.

Pros:

- Gives residents and property owners within the area advance notice of possible annexation.
- Allows the time period between passage of an annexation ordinance and the effective annexation date to be shortened to a minimum of seventy (70) days.
- The City can (and will) conduct smaller, incremental annexations within the area.

Cons:

- The possibility of annexing some parts of the area may not be realized for a number of years.

Staff recommends that City Council a Resolution of Consideration identifying areas with potential for future annexation.

Councilwoman Cape felt that having this map available to the public will make it fair to people who are considering buying properties near Asheville to determine if they might be annexed in the future or not.

Ms. Bonnie Vess, Swannanoa resident, spoke against forced annexation.

Councilwoman Cape invited Ms. Vess to the City Council Planning and Economic Development Committee's March 12, 2008, meeting at which time they will be hearing from the people from Swannanoa who want to incorporate.

Ms. June Patterson, Arden resident, spoke against forced annexation, especially since they rarely come into Asheville and do not need Asheville's services.

Ms. Tammy Wood, Asheville small business owner and realtor, spoke against forced annexation and the problems associated with obtaining housing certificates when people build in

the County and then are annexed. City Manager Jackson said that he would investigate Ms. Wood's concerns and follow-up with her.

Councilman Mumpower said that although there are arguments for forced annexation, he felt the negatives outweigh the positives. He felt annexation represents a substantial increase of expense for those being annexed.

Councilman Russell didn't like forced annexation and could see very limited times where he would support it. However, he felt this map is a planning tool and its adoption may raise some awareness and help Asheville grow in a much easier way.

Councilman Newman questioned whether the map actually realistically reflects the areas that Asheville is looking at closely for annexation over the next five years. City Manager Jackson said that this is 65 square miles beyond what anyone would expect in terms of annexation in the near future - 5-10 years. We looked into incrementally adjusting this, but suggested Council not try to fine-tune the map at this meeting. He said that there will be a process of review before staff brings it to Council again for future action. He pointed this is a planning tool and serves a purpose.

Vice-Mayor Davis said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Cape moved for the adoption of Resolution No. 08-43. This motion was seconded by Councilman Russell and carried on a 5-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 31 - PAGE 99

B. RESOLUTION NO. 08-44 - RESOLUTION SUPPORTING THE TERMS AND CONDITIONS OF THE LAND LEASE WITH PUBLIC INTEREST PROJECTS FOR THE PURPOSE OF CONSTRUCTING A PUBLIC PARKING GARAGE IN DOWNTOWN ASHEVILLE AT THE INTERSECTION OF BILTMORE AVENUE AND ASTON STREET

Director of Transportation and Engineering Cathy Ball said that this is the consideration of a resolution supporting the terms and conditions of the land lease with Public Interest Projects (PIP) for the purpose of constructing a public parking garage in Downtown Asheville at the intersection of Biltmore Avenue and Aston Street.

The Parking Study completed by Carl Walker Associates in 1998 determined the need for parking in the Biltmore Avenue area. With the development of the Ellington and the potential development of the lot at 51 Biltmore Avenue, 150 public parking spaces (under private control) could be lost. PIP currently owns the surface parking lot at 51 Biltmore Avenue. The City has been in discussions with PIP for several months to acquire a land lease in order to provide public parking in this area.

Ms. Ball said that (1) parking garages usually do not make money until the financing is paid; and (2) provide a benefit to the community (a) increased property values; (b) increase sales tax revenues; (c) growing or new businesses provide job opportunities; and (d) catalyst for economic development.

A brief history is that (1) 1998 Parking Study recommended a parking garage in this area; (2) 2005 Downtown Parking Action Plan recommended a parking garage in this area; (3) winter of 2007 staff began meeting with PIP and in November 2007 PIP made presentation to City Council; and (4) November 2007 Council agreed to move forward in good faith with PIP for this purpose.

A recent parking study prepared by Kimley-Horn and Associates indicates a peak demand for 618 parking spaces in this area and a normal demand of 472 parking spaces. Given the demand on the public parking currently at this location, staff feels this garage would be as successful as our other parking garages.

The proposed garage would be a 500 car parking garage. We have estimated the cost of a parking space to be $25,000. The City of Asheville would own, operate and maintain the parking garage. The City would pay an annual land lease payment for approximately 25,000 square feet of land. The City's contribution to the project is public parking only. The lease would be a Triple Net lease which means the City will pay taxes, utilities and maintenance on the facility. The terms of the lease would be for 40 years with two automatic extensions of ten years.

Regarding need, (1) 2007 Parking Study shows a deficit of 618 spaces during the peak hour and 472 spaces during normal hours; (2) 50 public parking spaces (controlled by the private sector) will be eliminated when the Ellington is built; and (3) 100 public parking spaces (controlled by the private sector) will be eliminated when this lot is developed.

Assumptions for pro forma include (1) 25 year Certificate of Participation Bond to finance project; (2) 300 parking spaces non-taxable rate; (3) 200 parking spaces taxable rate; (4) construction cost of $25,000 per space; (5) both hotel and PIP will pay additional costs associated with taxable rate; (6) 40 year land lease with two, 10 year renewal options for a total of 60 years; (7) 2% annual lease payment escalator and a 3% annual property value appreciation; and (8) sinking fund of $500,000 for major capital costs.

She then reviewed the pro forma for revenues and expenses.

The terms of the land lease include (1) 200 of the 500 spaces will be funded with taxable bonds - 150 hotel + 50 PIP (each to pay additional costs associated with taxable bonding); (2) turn-key project for the City; (3) land lease for 40 years with 2, 10 year extensions with same terms; (4) approximately 25,000 square feet of land; (5) NNN Lease; (6) cross easements treated as even exchange between the hotel and parking garage; (7) city operates and maintains parking garage; (8) contract to contain performance standards for garage between land owner and hotel (a) binding arbitration - no recourse through court; and (b) city defaults on lease, PIP gets garage at amortized value.

The developer would construct the garage and hotel. The City would take ownership of the garage after the Certificate of Occupancy has been obtained.

If the City fails to meet the terms of the lease, the land owner would have the right to use binding arbitration as a means of compliance. If the City fails to comply with the binding arbitration, the land owner may take ownership of the deck by paying the City the amortized value of the garage, deferred maintenance and capital costs.

Considerations of adopting a resolution authorizing the City Manager to execute this contract are as follows:

Pros:

- According to the findings of the downtown parking study, this area has a deficit of public parking of 400 to 600 spaces.
- Project should allow the development of workforce housing more feasibly due to reduced capital requirements for constructing private parking which in turn supports lower priced housing units.
- Capitalize on relationship with mixed use developer who is willing to partner with the City and make private property available for public use.
- Offer the opportunity to leverage public parking as an economic development tool.

- Offers community benefits such as additional jobs and tax base for the City created by the mixed use elements. These economic benefits may not be available or may be delayed if the project cannot be feasibly developed without the public parking component in the near-term.
- Public parking helps sustain existing investments and future growth of retail and office uses in the area.
- Public parking is critical for downtown office job expansion.

Cons:

- Public-private partnerships tend to be more complicated and require additional coordination between the City and the private sector than traditional stand-alone projects.
- Specific performance guarantees must be made by the City to third parties. Corresponding grantees are required of the developer to the City regarding the quality and sustainability of the mixed use components.
- No due diligence has been conducted regarding the developer's financial background and track record specific to delivering this type and scale of mixed use project.

The staff recommendation is that Council direct the City Manager to pursue a parking garage at this location by (1) finalizing the land lease terms with PIP; and (2) begin negotiations with the hotel to determine performance standards and design/construction responsibilities.

Throughout discussion, Ms. Ball responded to various questions/comments from Council, some being, but are not limited to: is the City financing all 500 spaces; what is the price of the land lease; does the $25,000 per parking space include the land lease; why is the City pursing a land lease when PIP will be building above us; which City department will carry this project forward; what does the term "NNN Lease" mean; do we have any information on the height of the hotel; based on our financial projects, will the revenues from our parking enterprise fund be sufficient to cover those costs; and regarding the rate structure for the project, could you charge more at this facility and get a faster payback or under-charge to encourage people to come downtown.

Councilman Mumpower felt that this project has a lot of appealing features, e.g., partnership opportunities and parking needs, however, with our sinking economy, he feels it is a mistake to commit to this kind of project.

Vice-Mayor Davis felt this project is worth pursuing, noting that we still have a lot of due diligence to perform.

Vice-Mayor Davis said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Newman moved for the adoption of Resolution No. 08-44. This motion was seconded by Councilman Russell and carried on a 5-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 31 - PAGE 101

C. RESOLUTION NO. 08-45 - RESOLUTION ALLOCATING FUNDS FOR A HOUSING TRUST FUND LOAN TO FINANCE AFFORDABLE HOUSING DEVELOPMENT

Community Development Analyst Randy Stallings said that this is the consideration of a resolution allocating $60,000 for a Housing Trust Fund loan to finance affordable housing development.

The following Housing Trust Fund application has been evaluated by the HTF review panel and recommended for approval by the Housing and Community Development Committee at its January 22 meeting. Currently $411,403.00 is available in the Housing Trust Fund.

Borrowers: Tim and Wendy Vorst; 6 Friendly Hollow; $60,000 HTF loan; 2 units for rent.

Terms: 2% interest, 30 year term; Three (3) year affordability requirement.

Strengths: The developer has an excellent history with Housing Trust Fund projects, and has consistently provided timely completion of projects and a commitment to affordability. Cost per unit, location and efficient land use are also positive features. Builder will pursue Energy Star certification. Units will be marketed first thru the Homeward Bound agency. This will be the 9th HTF project developed by Mr. Vorst, the third this fiscal year.

Concerns: Rents are affordable to those below 80% of the Area Median Income, but not to those below the 60% level. Long-term affordability beyond the required three years cannot be guaranteed.

Pros:

- Assists with the development of two (2) units of affordable rental housing.
- Provides effective land use through infill development.

Cons:

- None

Staff recommends approval of the HTF loan listed above.

Councilwoman Jones felt this is a great example of a partnership with a private developer who has a good track record with the City. We need more affordable rentals in this community and this is a start on how we start obtaining them. She said that this is money we invest now and get back with interest and when the house is built, not only will it meet a community need, but it will start contributing to the City's tax base.

In response to Councilman Russell's concern about the terms of the loan, Councilman Newman said that the Housing & Community Development Committee has looked at the terms many times. He explained that this isn't a grant, just a low interest low and it's for a pretty small percentage of the project. We would love to have the affordability locked in for longer than three years, but if you extend the affordability term out longer, some developers will not use it. He said they will continue to look at the right balance.

Councilman Mumpower felt the City should not use tax dollars to subsidize affordable housing. He felt these kind of initiatives will not begin to fix affordable housing in Asheville.

Vice-Mayor Davis said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Jones moved for the adoption of Resolution No. 08-45. This motion was seconded by Councilman Newman and carried on a 4-2 vote, with Councilman Mumpower and Councilman Russell voting "no."

RESOLUTION BOOK NO. 31 - PAGE 102

D. FISCAL YEAR 2008-09 BUDGET PREPARATION SCHEDULE AND A POSSIBLE NOVEMBER 2008 GENERAL OBLIGATION BOND REFERENDUM

At the request of Vice-Mayor Davis, due to Mayor Bellamy's interest and magnitude of this issue, Councilman Newman moved to withdraw this item for consideration on this agenda. This motion was seconded by Councilman Russell and carried unanimously.

Vice-Chair of the Greenway Commission Mark Hunt hoped Council would discuss this item soon as a lot of due diligence needs to be done prior to the November referendum, if Council decides to ask for a referendum.

At the suggestion of Councilwoman Jones, it was the consensus of Council to instruct staff to find a suitable worksession date between now and the March 18, 2008, to be solely dedicated to this item.

E. RESOLUTION NO. 08-46 - RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE GREENWAY COMMISSION

Vice-Mayor Davis, Chair of the Boards & Commissions Committee, said that the term of Scott Jackson, as a member of the Asheville Greenway Commission, expired on December 31, 2007.

On February 19, 2008, City Council instructed the City Clerk to arrange interviews for Jonah Butcher, Stephanie Pankiewicz, Ellen Bailey, Thomas E. Mesk, Marcie Bromberg and Tom Burnet.

After Council spoke highly of the candidates, Mr. Butcher received no votes, Ms. Pankiewicz received 1 vote, Ms. Bailey received no votes, Mr. Mesk received 1 vote, Ms. Bromberg received 3 votes and Mr. Burnet received no votes. Therefore, Marcie Bromberg was appointed to serve a three-year term, term to expire December 31, 2010, or until her successor has been appointed.

RESOLUTION BOOK NO. 31 – PAGE 103

VII. OTHER BUSINESS:

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

City Manager Jackson was pleased to report that the City has worked out an acceptable arrangement, in partnership with the N.C. Dept. of Transportation (NCDOT), to proceed with a waterline on Sand Hill Road. He noted this is an example of collaboration with Buncombe County and the NCDOT. He said that staff will be coming back to Council with a budget amendment for this significant water capital improvement.

IX. ADJOURNMENT:

Vice-Mayor Davis adjourned the meeting at 10:25 p.m.

Kusha Lee
CITY CLERK

Terry M Bellamy
MAYOR

Tuesday – March 11, 2008 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; Councilman William A. Russell Jr.; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Keisha Lipe

Absent: None

PLEDGE OF ALLEGIANCE

Girls on the Run, with Claxton Elementary School, led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Russell gave the invocation.

I. PROCLAMATIONS:

A. NOBEL PRIZE WINNERS

Mayor Bellamy said that the City of Asheville was pleased to recognize climate scientists in our community who contributed to one or more of the reports of the Intergovernmental Panel on Climate Change (IPCC). She said that the 2007 Nobel Peace Prize was awarded to the IPCC and Vice President Al Gore in recognition that climate change could threaten world peace, and that the work of the IPCC and the advocacy of Vice President Gore sounded an important wake-up call for our society to confront this challenge.

Hundreds of authors from all regions of the world devoted considerable time and effort from the start of the IPCC effort in 1990. Many of those that we honor today are climate scientists from the National Oceanic Atmospheric Administration's National Climatic Data Center (NOAA-NCDC) here in downtown Asheville. Their contributions to the science underpinning the IPCC reports reflect favorably on the U.S. Government, NOAA, and our community. The work highlights the importance of the fields of atmospheric and environmental science in our community, particularly the contributions made by NCDC since it was established in the Grove Arcade in 1951.

Scientists are, by nature, inquisitive. Research efforts like the IPCC are performed with many thousands of hypotheses, many hundreds of hours of computer processing, and many cups of coffee shared between colleagues. That such a great honor emerged from these work experiences right here in our community is something that we can all be very proud of.

She then recognized the following individuals with a City of Asheville Certificate (composed by Ann Vasilik): Tim Owen, Richard W. Reynolds, John J. Bates, Michael Crowe, Robert E. Eskridge, Robert G. Quayle, Byron Gleason, Thomas R. Karl, David Wuertz, David R. Easterling, Thomas C. Peterson, Jay Lawrimore, Pasha Ya. Groisman, Lenard Bernstien, Russell Vose, David Levinson and Richard Knight.

B. PROCLAMATION PROCLAIMING MARCH 16-22, 2008, AS "MULTIPLE SCLEROSIS AWARENESS WEEK"

Mayor Bellamy read the proclamation proclaiming March 16-22, 2008, as "Multiple Sclerosis Awareness Week" in the City of Asheville. She presented the proclamation to Dr. Mary Sedgwick, with Mountaintop Endeavors, who briefed City Council on some activities taking place during the week.

C. BUILDING SAFETY RECOGNITIONS

City Manager Jackson recognized Ms. Marlene Frisbee in the Building Safety Department for her outstanding customer service as noted by Ms. Deborah Rogers with Davidson Homes.

Mr. Matt Holloway, President of Aspen Builders, explained his outstanding customer service he received from the following employees: Mark Case, David Souther, Ron Evans, Gary Stamey, Alec Arthur, Larry Davis, Sheila Salyer, Suzannah Carver, Kelly Heinz and Linda Kaye.

Mr. Robert Griffin, Director of the Building Safety Department, explained to Council his department's efforts in continually reviewing their processes and procedures so they can become for effective and efficient.

Mayor Bellamy thanked Mr. Griffin for his leadership, especially going above and beyond with the project of the Health Adventure in the Montford area.

ADDITION TO THE AGENDA

At the request of Councilman Newman, the topic of a Personnel Committee was added as Item B under New Business.

II. CONSENT AGENDA:

At the request of Councilman Mumpower, Consent Agenda Items "I" and "J" were removed from the Consent Agenda for discussion and/or individual votes.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON FEBRUARY 26, 2008

B. RESOLUTION NO. 08-47 - RESOLUTION APPOINTING COUNCILMAN BROWNIE NEWMAN AS A MEMBER TO THE ASHEVILLE REGIONAL AIRPORT AUTHORITY

Summary: Former Councilman Bryan Freeborn is no longer a member on City Council, and on January 15, 2008, it was the consensus of Council to appoint Councilman Brownie Newman to fill the unexpired term of former Councilman Freeborn as a member on the Asheville Regional Airport Authority until June 30, 2008, or until he ceases to be a member of City Council.

RESOLUTION BOOK NO. 31 - PAGE 104

C. RESOLUTION NO. 08-48 - RESOLUTION APPOINTING VICE-MAYOR JAN DAVIS AS A MEMBER TO THE CITIZENS/POLICE ADVISORY COMMITTEE

Summary: Councilwoman Robin Cape has resigned as the ex-officio non-voting member of the Citizens-Police Advisory Committee. On January 15, 2008, it was the consensus of Council to appoint Vice-Mayor Jan Davis to serve as the ex-officio non-voting member according to the length of his Council term of office.

RESOLUTION BOOK NO. 31 - PAGE 105

D. RESOLUTION NO. 08-49 - RESOLUTION APPOINTING COUNCILMAN BILL RUSSELL AS A MEMBER TO THE METROPOLITAN SEWERAGE DISTRICT BOARD OF DIRECTORS

Summary: Councilman Brownie Newman has resigned from the Metropolitan Sewerage District, and on January 15, 2008, it was the consensus of Council to appoint Councilman Bill Russell to fill the unexpired term of Councilman Newman until July 1, 2009.

RESOLUTION BOOK NO. 31 - PAGE 106

E. RESOLUTION NO. 08-50- RESOLUTION MODIFYING THE 2008 CITY COUNCIL MEETING SCHEDULE

Summary: City Council worksessions will be held on the third Tuesday of each month at 5:00 p.m. in the Council Chamber, located on the 2nd Floor of the City Hall Building, Asheville, North Carolina.

RESOLUTION BOOK NO. 31 - PAGE 107

F. RESOLUTION NO. 08-51- RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE PROPERTY AT THE CORNER OF BAXTER STREET AND MARTIN LUTHER KING JR. DRIVE

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer to purchase property at the corner of Baxter Street and Martin Luther King Jr. Drive (PIN # 9649.19-60-6731).

A bid has been received from David Freck in the amount of $18,000 for the purchase of land on the corner of Baxter Street and Martin Luther King Jr. Drive.

The land at the corner of Baxter Street and Martin Luther King Jr. Drive was acquired by the City as part of the East End/Valley Street Community Improvement Program. It is a flag shaped lot comprising 0.15 acre±. The parcel has frontage on Martin Luther King Jr. Drive and is appropriate for sale as a residential lot with current zoning RS8. The bid from David Freck is in the amount of $18,000. We have an appraisal on file prepared by Richard Smith dated December 17th, 2007 that estimates the fair market value of the property to be at $18,000. Mr. Freck's bid is equal to the appraised fair market value.

Pros:

- The sale will be at fair market value as established by the upset bid process.
- It will return property not needed for public use to the tax rolls.
- It will transfer responsibility for maintenance to the private sector.

Con:

- There is no negative impact.

The proceeds from the sale of this parcel will be Community Development Block Grant Program Income.

Economic Development staff recommends City Council approve a resolution authorizing the City Clerk to advertise an offer to purchase property at the corner of Baxter Street and Martin Luther King Jr. Drive (PIN # 9649.19-60-6731).

RESOLUTION BOOK NO. 31 - PAGE 108

G. RESOLUTION NO. 08-52 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A FINAL CHANGE ORDER FOR HOBSON CONSTRUCTION COMPANY FOR THE HOMINY CREEK WATERLINE CROSSING PROJECT

Summary: The consideration of a resolution authorizing the City Manager to sign a final change order for Hobson Construction Company for the Hominy Creek Waterline Crossing Project, and the associated budget amendment in the amount of $37,167.00.

Original bid was received and awarded to Hobson Construction Company. Previous amount of the project was $384,299.99 to install a new 24-inch waterline under Hominy Creek at Brevard Road. During the installation of the new waterline, Hobson Construction encountered rock that would require blasting in order to proceed with the project. The N.C. Dept. of Transportation (NCDOT_ would not allow blasting for this project due to the proximity of the I-40 and Brevard Road bridges, thus requiring the waterline to be moved outside the blasting zone. Hobson Construction would be required to install 840 additional linear feet of 24" ductile iron pipe, 40 additional linear feet of paving, and other associated costs for an additional cost of $37,166.01. The total project cost is $421,466.00.

These plans have been reviewed by McGill Associates, the engineer for the project, and McGill has recommended the change in project scope.

Pros:

- Will enhance water flow and pressure on Brevard Road from I-40 to I-26 including fire flow requirements for new commercial businesses along this corridor.
- Will enable future system looping to supply water to the western part of the Buncombe County.

Con:

- The additional cost was not programmed for this project. Funds are being reprogrammed primarily from two other capital project that came in under budget.

City staff recommends City Council approve a resolution authorizing the City Manager to sign a final change order for Hobson Construction Company for the Hominy Creek Waterline Crossing Project, and the associated budget amendment in the amount of $37,167.00.

RESOLUTION BOOK NO. 31 - PAGE 109

H. ORDINANCE NO. 3588- BUDGET AMENDMENT FOR THE HOMINY CREEK WATERLINE CROSSING PROJECT

Summary: See Consent Agenda "G" above.

ORDINANCE BOOK NO. 24 - PAGE 353

I. BUDGET AMENDMENT FOR A GRANT FROM THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES, DIVISION OF WATER QUALITY, FOR CONSTRUCTION OF A RAIN GARDEN AT RICHMOND HILL PARK

This item was removed from the Consent Agenda for discussion and/or an individual vote.

J. BUDGET AMENDMENT FOR A GRANT FROM THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES, DIVISION OF WATER

QUALITY, FOR STREAM RESTORATION AND CONSTRUCTION OF STORM WATER WETLANDS AT REED CREEK

This item was removed from the Consent Agenda for discussion and/or an individual vote.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilwoman Jones moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Cape and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

I. **ORDINANCE NO. 3589 - BUDGET AMENDMENT FOR A GRANT FROM THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES, DIVISION OF WATER QUALITY, FOR CONSTRUCTION OF A RAIN GARDEN AT RICHMOND HILL PARK**

Summary: The consideration of a budget amendment in the amount of $55,000 for a grant from the North Carolina Department of Environment and Natural Resources, Division of Water Quality for construction of a rain garden at Richmond Hill Park.

Funds will be used in partnership with the North Carolina State University Water Quality Group for creating a rain garden at Richmond Hill Park to filter storm water from the existing parking lot. The rain garden is a Low Impact Development (LID) feature that will help return this formerly eight acre forested area of Richmond Hill Park to its predevelopment hydrology.

Pros:

- Strengthen the City of Asheville's commitment to water quality.
- Serve as public examples of the type of LID that the City has endorsed through its ordinances.
- Fulfill the full intention of the Richmond Hill Park master plan.

Con:

- None

The Parks and Recreation Department recommends City Council approve a budget amendment in the amount of $55,000 for construction of a rain garden at Richmond Hill Park.

Councilman Mumpower said that his comments are directed at Consent Agenda Items I and J. He felt that if the City wants to do these nice projects, the City should pay for them. He felt the state government is neglecting their core responsibilities. Regarding the state's core responsibilities, they include the Court system, public safety (specifically drug interdiction), the mental health system and the State Bureau of Investigation crime lab. To be taking money from the State for nice things he felt, is a misinvestment of dollars.

Councilman Newman felt that for the people in Asheville who pay taxes to the state government and not receive anything in return would be an irresponsible approach. He felt Asheville residents should get something in return for their investment.

Councilman Newman moved for the adoption of Ordinance No. 3589. This motion was seconded by Councilwoman Jones and carried on a 6-1 vote, with Councilman Mumpower voting "no."

J. ORDINANCE NO. 3590 - BUDGET AMENDMENT FOR A GRANT FROM THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES, DIVISION OF WATER QUALITY, FOR STREAM RESTORATION AND CONSTRUCTION OF STORM WATER WETLANDS AT REED CREEK

Summary: The consideration of a budget amendment in the amount of $32,000 for a grant from the North Carolina Department of Environment and Natural Resources, Division of Water Quality for stream restoration and construction of storm water wetlands at Reed Creek.

Funds will be used in partnership with the North Carolina State University Water Quality Group for stream restoration and storm water wetlands along Reed Creek, a heavily impaired stream, which drains over 600 acres of downtown Asheville. The project will redirect stream flow to decrease stream bank erosion and construct storm water wetlands to create a new native plant riparian buffer.

Pros:

- Strengthen the City of Asheville's commitment to water quality.
- Fulfill the full intention of the Reed Creek Greenway master plan.

Con:

- None

The Parks and Recreation Department recommends City Council approve a budget amendment in the amount of $32,000 to establish a budget for stream restoration and construction of stem water wetlands at Reed Creek.

Councilman Newman moved for the adoption of Ordinance No. 3590. This motion was seconded by Councilwoman Jones and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ordinance
~~RESOLUTION~~ BOOK NO. ~~31~~ 24 - PAGE 357

III. PRESENTATIONS & REPORTS:

City Manager Jackson introduced Mr. Sherman Bass, the new Civic Center Director. Mr. Bass said that he looked forward to serving City Council and the citizens of Asheville in his new role.

Vice-Mayor Davis announced a reception being held to introduce Mr. Bass to the community on April 1, 2008, at 5:30 p.m. in the Banquet Room of the Civic Center.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR THE ZONA VILLAGE PROJECT LOCATED ON BUXTON AVENUE FOR AN 11-STORY MIXED-USE BUILDING

ORDINANCE NO. 3591 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR THE ZONA VILLAGE PROJECT LOCATED ON BUXTON AVENUE FOR AN 11-STORY MIXED-USED BUILDING

City Clerk Lipe administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 5:42 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Jessica Bernstein submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Bernstein said that this is the consideration of the issuance of a conditional use permit for the Zona Village Project located on Buxton Avenue for an 11-story mixed-use building.

She said that the applicant is requesting review of site plans for a proposed residential condominium building with office/retail space on the first story. Pursuant to section 7-5-9(a) of the Unified Development Ordinance (UDO), any residential development of more than 50 units and any mixed-use structure with more than 45,000 square feet located within a half-mile of the Central Business District (CBD) shall be considered as a Level III project and a Conditional Use.

The project area is a 0.17 acre lot located on the north side of Buxton Avenue between Collier and South Lexington Avenues, zoned CBD (Attachment to City Exhibit 3 - Aerial Map). The applicant is proposing an 11-story structure (135') primarily comprised of residential condos (total square footage 62,375) (Attachment to City Exhibit 3 - Elevation drawings). There will be 54 condos as follows:

- 32 1-bedroom units, ranging in size from 632 – 791 square feet;
- 18 2-bedroom units, ranging in size from 903 – 1050 square feet;
- 4 3-bedroom units, ranging in size from 1200 – 1570 square feet.

There is approximately 3,000 square feet of office/retail space included on the ground floor:

- 2 office spaces at 670 and 915 square feet (1585 square feet total office);
- 2 retail spaces at 724 and 947 square feet (1671 square feet total retail).

Landscaping as proposed complies with City requirements and includes two street trees. The sidewalks are proposed to be widened to 8 feet, subject to approval by the City Traffic Engineer. The applicant intends to incorporate a streetscape plan along the entire northern side of Buxton Avenue, including widened sidewalks and street trees in bump-outs, which distinguish on-street parking areas. There is no off-street parking required or proposed (Attachments to City Exhibit 3 - Site Plan and Elevation drawings).

Off-site storage and staging area is proposed across Buxton Avenue at PIN 9648.06-37-7809, which is under the same ownership. Proposed Jib Crane location and swinging radius have been included in plans, and the applicant has been meeting with City staff on this issue to propose a construction plan that will be as safe and as minimally disruptive to the existing community as possible. A final plan will be part of the final Technical Review Committee (TRC) review process.

The project was approved by the Downtown Commission on November 9, 2007. During the review, the applicant indicated that this project will meet LEED criteria and will include elements such as an underground geothermal heating and cooling system, high efficiency insulation and lighting, bamboo flooring and rainwater harvesting for flushing toilets.

At their January 7, 2008, meeting, the TRC approved this project with the conditions as listed in their staff report. The proposal was unanimously approved by Planning & Zoning Commission (6-0) on February 6, 2008. Several Commissioners expressed positive comments regarding the sustainable features, praising the developer for proposing the first geothermal heating/cooling system for a multi-family development in the CBD.

Staff has received no communication from adjacent property owners or other citizens concerning the proposed development.

Section 7-7-8(d)(2) of the UDO states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in Section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. That the proposed use or development of the land will not materially endanger the public health or safety.

   The project will meet State building code requirements and will be reviewed in detail by the TRC to ensure compliance with safety requirements.

2. That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.

   The site is an infill parcel in the south slope area of the Central Business District. The parcel is relatively flat.

3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.

   The parcel for the proposed building is under-utilized. The new use is expected to act as a catalyst for further redevelopment of under utilized properties in the vicinity of the parcel. The project is expected to enhance the values of adjoining properties.

4. That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

   The proposed project is located in the Central Business District where there is no height, Density or maximum building size limitation. Nearby Zona Lofts, which was approved by City Council in August 2007, is to be 15 stories and although these buildings have not yet been built, this structure will be compatible with the emerging character of this neighborhood.

5. That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.

   The project conforms to the comprehensive plan and smart growth policies as this proposal is for higher density infill redevelopment in an area with existing supportive

infrastructure in an underutilized part of the City. The project employs multiple green features for energy conservation that correspond to the City's dedication to environmentally-responsible development and supports the livability and vitality of downtown by offering housing at a workforce rate in close proximity to public transit and in a walkable urban location.

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

The project is located in the CBD in an area easily accessed for transportation, life and safety facilities and utility infrastructure.

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

The project is not expected to create traffic congestion or a traffic hazard. Mixed-use areas such as the CBD can reduce traffic concerns by encouraging people to walk more or use public transit.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros

- This project provides new development in an under-utilized are of the CBD and has the potential to be a "catalyst" for additional growth.
- The project integrates a number of green features and environmentally-sensible design practices.

Cons

- No off-street parking is proposed for this development, although not a requirement, but lack of parking may not satisfy the needs of the residents.

Staff recommends approval of the project inclusive of the following standard conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; and (5) This project will undergo final review by the TRC prior to issuance of any required permits.

Mr. Robin Pittman, representing the applicant, explained to Council that the project is in-fill redevelopment, is a 12-story mid-rise building, contains mixed use (sensible mix of workforce and upscale housing), comprises of 54 residential units and has retail on the ground floor. The project will redevelop a targeted redevelopment area, contain affordable housing, will be close-in housing for hospital employees and has sustainable architecture. He then explained in detail the energy efficient design, noting the many green features the project would include.

After rebuttal, Mayor Bellamy closed the public hearing at 5:52 p.m.

When Councilwoman Cape questioned the developer's commitment to LEED certification, Mr. Pittman said that certifications are constantly changing and their commitment is that they want their project to be environmentally correct.

There was a brief discussion, initiated by Vice-Mayor Davis, about parking. Mr. Pittman said that he recognizes the need to have places for people to park because they can't sell the

units if they don't have a convenient place for the people to park. They are now studying a structure which will contain 500 cars, which based on the present plan may be completed prior to the construction of Zona Village One.

Mayor Bellamy asked that as part of the developer's Master Plan process moving forward, if they could look at a lower price point to meet the City's affordable housing cap.

Councilwoman Cape encouraged the developer to participate in the City's downtown Master Plan process.

Councilman Newman moved to adopt Ordinance No. 3591 to grant a conditional use permit for the Zona Village located on Buxton Avenue, subject to the conditions recommend by City staff and the standard conditions as follows: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; and (5) This project will undergo final review by the TRC prior to issuance of any required permits. This motion was seconded by Councilman Mumpower and carried unanimously.

ORDINANCE BOOK NO. 24 - PAGE 359

B. **PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF PROPERTY LOCATED AT 34 AND 35 PINE LANE FOR THE PROJECT IDENTIFIED AS JIM BARKLEY TOYOTA, LOCATED AT 777 BREVARD ROAD FROM RS-8 RESIDENTIAL SINGLE FAMILY HIGH DENSITY DISTRICT TO REGIONAL BUSINESS DISTRICT/CONDITIONAL ZONING**

ORDINANCE NO. 3592 - ORDINANCE TO CONDITIONALLY ZONE PROPERTY FOR THE PROJECT LOCATED AT 34 AND 35 PINE LANE IDENTIFIED AS JIM BARKLEY TOYOTA, LOCATED AT 777 BREVARD ROAD FROM RS-8 RESIDENTIAL SINGLE FAMILY HIGH DENSITY DISTRICT TO REGIONAL BUSINESS DISTRICT/CONDITIONAL ZONING

Mayor Bellamy opened the public hearing at 6:00 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to conditionally zone property located at 34 and 35 Pine Lane for the project identified as Jim Barkley Toyota from RS-8 Residential Single Family High Density District to Regional Business District/Conditional Zoning to be utilized for an additional storage area and overflow parking for the existing car dealership. This public hearing was advertised on February 29 and March 7, 2008.

She said that the subject property is .60 acres (two parcels) located at the end of a platted right-of-way and private gravel drive that tie into city-maintained Pine Lane. The properties are addressed as 34 and 35 Pine Lane. The property is zoned RS-8 and contains a vacant, dilapidated, single-family home on one parcel. Previously a single manufactured home was located beside this home. The parcel which contained the manufactured home is now covered with an asphalt parking area and some storage structures. Except for the dealership property to the south, these parcels are surrounded by property that is zoned RS-8 and is used for single-family residential purposes.

The applicant, Jim Barkley Toyota, initiated work (grading and paving) and use (storage and parking) of a portion of the property without required permits or proper zoning. This work was done in conjunction with the expansion of the dealership and came to the attention of staff during the review of the larger project. The applicants are now seeking a conditional rezoning to permit the use of the property as employee parking. The request is for the property to be rezoned from RS-8 (Residential Single-Family High Density District) to RB/CZ (Regional Business Conditional Zoning). This parking area would connect with and be accessed through the adjoining dealership property. An extensive 30 foot buffer is proposed for all sides abutting residential property. It is proposed that 25 additional spaces for employee parking would be established through the creation of this parking area. They have committed to no additional lighting on the property.

At a meeting on January 7, 2008, the City of Asheville Technical Review Committee (TRC) reviewed the conditional zoning request and made a positive recommendation (with conditions) that the project be forwarded to the Planning and Zoning Commission. The developer has submitted a detailed landscape plan since that time.

At a meeting on February 6, 2008, the Asheville Planning and Zoning Commission reviewed the request. The Commission voted 5-1 to recommend the conditional zoning be approved with conditions suggested by staff and the added condition that access onto Pine Lane be prohibited from the driveway right-of-way. No one spoke in opposition to the project.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in Section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. That the proposed use or development of the land will not materially endanger the public health or safety.

   The project, if approved, must meet the technical standards set forth in the City's Unified Development Ordinance and Standards and Specifications Manual. All indications are that all standards can be met related to safety issues.

2. That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.

   There are no significant topographic or natural features on the site that make this condition an issue. The developer is proposing to grade and fill the site to level off the property for the parking area. There is now an approximately 20 foot differentiation in height from the eastern to western sides of the property.

3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.

   The expansion of the automobile dealership under this development proposal, even if only for employee parking, would result in a commercial incursion into an established residential area which may diminish property values of the residences which surround the parcel. The developer is not adding lighting in this area and is providing a significant buffer which should mitigate the impact on the abutting properties.

4. That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

The creation of additional employee parking for the automobile dealership is, of course, in harmony with the existing dealership of which it would become a part. It is not in harmony with the character of the residential area to the north which is comprised of single-family homes.

5. That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.

   This development proposal supports the Asheville City Development Plan 2025 depiction of the Brevard Road/I-26 interchange area as a regional node. The development does not support the Asheville City Development Plan 2025 in that it specifically calls for the strengthening and enhancing of neighborhood viability through the encouragement of compatible development that protects neighborhoods from inappropriate non-residential encroachment.

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

   This proposal would have little to no effect on transportation, water supply, police and fire protection, waste disposal, etc. as it is a very minor expansion to an existing development.

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

   The proposed additional parking will not cause any traffic congestion or traffic hazard issues.

Based on the above findings and the analysis provided in the report, staff finds this request to be unreasonable.

Pros

- Large buffer that is proposed will be an asset to the adjoining residential properties.
- Provides needed parking for an established business.
- Parking lot lighting is not proposed for this addition, making it less intrusive to adjoining residential uses.

Cons

- Creates a commercial intrusion into an established residential area.
- Loss of housing stock.
- The request is contrary to the wishes of residents that were expressed during the Brevard Road corridor study.

Based on the above findings and the analysis provided in the report, staff found this request to be unreasonable. Staff recommended denial of this conditional zoning request due to compatibility issues and concerns about the incursion of commercial development into a residential area. The developer has proposed a nice vegetation plan and no additional lighting which will mitigate the impact. For these reasons and the fact that there is no neighborhood opposition, the Planning and Zoning Commission recommended this rezoning to you (5-1). They added the condition that access onto Pine Lane be prohibited from the driveway right-of-way.

Mr. Gary Rowe, representing Jim Barkley Toyota, explained that Mr. Barkley was lead to believe that he could do the development and when he was advised that he was in violation, he stopped and applied for a conditional use permit. He explained that the area will be solely used as employee parking and not storage. He said that the address is on Pine Lane; however, the property does not front on Pine Lane and they will not use Pine Lane at all for access to this property, as it will be buffered. Access to the lot will only be from the dealership. He said that the buffering will be far better than what is on the property now and the area will be more attractive. He acknowledged the intrusion in to the residential property; however, he felt it will not be offensive. He urged Council to support the conditional zoning request.

Mayor Bellamy closed the public hearing at 6:07 p.m.

Ms. Cogburn responded to Councilwoman Cape's concern about notification of adjoining property owners and the Brevard Road Corridor Study results.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved to adopt Ordinance No. 3592 to conditionally rezone 34 and 35 Pine Lane from RS-8 Residential Single-Family High Density District to Regional Business District/Conditional Zoning, subject to the following conditions: (1) Access onto Pine Lane be prohibited from the property; (2) the area may only be used for parking (no storage allowed); (3) The project shall comply with all conditions outlined in the TRC staff report; (4) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (5) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (6) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; and (7) This project will undergo final review by the TRC prior to issuance of any required permits. This motion was seconded by Vice-Mayor Davis and carried on a 6-1 vote, with Councilwoman Cape voting "no."

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C. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF PROPERTY LOCATED AT 3 SPRINGSIDE ROAD FROM RS-8 RESIDENTIAL SINGLE FAMILY HIGH DENSITY DISTRICT TO COMMUNITY BUSINESS I DISTRICT/ CONDITIONAL ZONING FOR AN OFFICE/LIGHT COMMERCIAL BUILDING

ORDINANCE NO. 3593 - ORDINANCE TO CONDITIONALLY ZONE PROPERTY LOCATED AT 3 SPRINGSIDE ROAD FROM RS-8 RESIDENTIAL SINGLE FAMILY HIGH DENSITY DISTRICT TO COMMUNITY BUSINESS I DISTRICT/ CONDITIONAL ZONING FOR AN OFFICE/LIGHT COMMERCIAL BUILDING

Mayor Bellamy opened the public hearing at 6:09 p.m.

Urban Planner Alan Glines said that this is the consideration of an ordinance to conditionally zone property located at 3 Springside Road from RS-8 Residential Single Family High Density District to Community Business I District/ Conditional Zoning for an office/light commercial building. The project is also seeking modifications of the property line buffer requirements. This public hearing was advertised on February 29 and March 7, 2008.

Urban Planner Alan Glines oriented the Commission to the site location and said the conditional zoning proposal for 3 Springside Road is seeking the redevelopment of a single parcel and removal of a single family home for an office use.

The subject property is one parcel west of Hendersonville Road in the Skyland area. The existing zoning for the parcel is RS-8 and the request is to rezone to CB I/CZ. The proposed plan for the site provides a single 1,050 square foot structure and 5 parking spaces on the .15 acre site. The existing single family home and garage will be removed. The property is burdened with a sewer line easement along the eastern side of the parcel. Surrounding the property is a gas station and other commercial uses on the properties fronting along Hendersonville Road and a mobile home park to the west and south. The transition from a single family use could be looked at as a gradual change for properties in close proximity to a busy commercial corridor. The mobile home park is a non-conforming grandfathered use for the RS-8 zoning classification and pre-dates the zoning in place for the area. These existing surrounding uses make single family residential living less attractive for this site. The site is constrained because of the sewer line that crosses under the existing home. The Unified Development Ordinance (UDO) will require a property line buffer along the RS-8 property line (the mobile home park) but because of the constraints of the site, the developer is seeking a modification from a 'B' buffer (30 feet) width from City Council. The plan will provide a minimum of a 10 foot wide buffer and increasing for most of the length to be 20 feet wide. The normal quantity of plant materials required with a 30 foot buffer will be located to other areas around the site. The building is designed appropriately for the limitation of the site (at 1,150 square feet) and with the proposed driveway space and parking should improve the property.

Commercial zoning requires a property line buffer when adjacent to residentially zoned property as noted in the UDO. A property line buffer will be required along the west side of the property and street trees will also be required along Springside Road.

A 30 foot wide 'B' buffer is required along the west property line adjacent to the mobile home park. Because of the constraints on the site from the sewer line easement, the developer is seeking a modification from the buffer width from City Council for this property line buffer. Even with the buffer reduction, a planted area with a minimum width of 10 feet and increasing for most of the length to be 20 feet wide will be provided. The normal quantity of plant materials required with a 30 foot buffer will be located to other areas around the site.

The Community Business I (CB I) is established to provide areas for medium-density business and service uses serving several residential neighborhoods that are commonly found and needed in a neighborhood environment. This district may serve as a workplace for many residents in the surrounding neighborhood and should be sensitive to a significant pedestrian population and also provide for safe vehicular access. The specific use is not identified in this application but it will be one from the list of the uses permitted in the CB I district.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in Section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. That the proposed use or development of the land will not materially endanger the public health or safety.

   The proposal has been reviewed by the Technical Review Committee and will comply with technical requirements to ensure public health and safety.

2. That the proposed use or development of the land is reasonably compatible with

significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.

The proposed plan is compatible with features of the site and will keep development off of the sewer line easement crossing the property. A landscape buffer will be added to minimize any potential land use conflicts.

3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.

   The modest proposal is not expected to injure the value of adjoining or abutting property.

4. That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

   The scale of the development and design for the site is compatible with the scale of the neighborhood and the lot size and other constraints of the lot. The commercial building proposed will be 1,150 square feet which is in harmony with the scale of commercial structures that border the property.

5. That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.

   The comprehensive plan recognizes the gradual trend to redevelop underused properties to other more intense development especially along transportation corridors and other growth corridors. The request is reasonable based on the location of the parcel and the limited intensity of the proposed development.

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

   The subject property is located in close proximity to Hendersonville Road and is appropriately located with respect to public infrastructure since it is one parcel west of Hendersonville Road. Transit route 6 passes nearby along Hendersonville Road.

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

   The proposal is limited in scale and is not expected to create a traffic hazard or cause undue traffic congestion. A traffic impact analysis was not required for this proposal.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros

- An underutilized property will be redeveloped
- The proposal is in scale with the site and will limit land disturbance
- The scale of the development is compatible with surrounding development

Con

- Results in a loss of an affordable or workforce housing unit

This conditional rezoning request was recommended for approval by a 5-1 vote by the Planning and Zoning Commission. Only the agent for the owner spoke at the Planning & Zoning Commission meeting.

Staff recommends approval of the conditional zoning to CB-1 and the Master Plan for 3 Springside Road along with the landscape buffer modification and subject to the following standard conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with full cut-off fixtures and directed away from adjoining properties and streets; (3) The building orientation on site must comply with the conceptual site plan presented with this application. Any deviation from the plan may result in reconsideration of the project by the reviewing boards; and (4) This project will undergo final review by the TRC prior to issuance of any required permits.

Mr. Gerald Green, representing the developer, cited several reasons why this is a difficult site, e.g., the small size, the MSD sewer and the present house location. He felt there will be minimal impact on the surrounding area and it will be a good transition from the more intense commercial development to the east to the residential uses to the west of the site. They are committed to planting all the plant material and asked for the Commission's support in granting their modification request.

Mayor Bellamy closed the public hearing at 6:14 p.m.

Mr. Glines responded to Councilman Mumpower's question regarding staff's support of the buffer modification.

Councilwoman Cape was concerned by the commercial intrusion into the neighborhood, especially since there are many commercial properties on Hendersonville Road that are vacant. She also expressed concern of the vagueness of the type of business that would be located on the property and it's usefulness to the neighborhood.

Mayor Bellamy expressed concern about the landscaping close to the street (so as not to impede the view of people exiting the site). Mr. Glines said that the developer will have to meet the site triangle requirements in the UDO to protect the site distance. In addition, responding to Mayor Bellamy, Mr. Glines noted that the easement for the sidewalk will be part of the final TRC review.

Mayor Bellamy asked that the developer provide adequate shielding the mechanical parts of the building from the residential neighborhood.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3593 to conditionally rezone 3 Springside Road from RS-8 Residential Single Family High Density District to Community Business I District/Conditional Zoning, with the modification from a 'B' buffer (30 feet) width, and subject to the following standard conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; and (5) This project will undergo final review by the TRC prior to issuance of any required permits. This motion was seconded by Councilman Russell and carried on a 6-1 vote, with Councilwoman Cape voting "no."

V. UNFINISHED BUSINESS:

A. RESOLUTION NO. 08-53 - RESOLUTION AMENDING THE CITY'S 2007-08 CONSOLIDATED ACTION PLAN

Mayor Bellamy said that this item has been continued from the February 26, 2008, meeting, at which time City Council instructed staff to contact other organizations who have experience in administering Community Development Block Grant (CDBG) grants to see if they would be interested in carrying out this program.

Community Development Director Charlotte Caplan said that this is further consideration of a proposal to amend the 2007 Consolidated Action Plan to re-allocate a $10,000 CDBG grant for community organizing in the Weed and Seed area to the Coalition of Asheville Neighborhoods (CAN).

At the Council meeting on February 26, 2008, this item was tabled for further discussion. Staff was asked to contact other organizations who have experience in administering CDBG grants to see if they would be interested in carrying out this program.

To date, staff has contacted six local non-profit agencies to gauge their level of interest in submitting an application to take over the grant and operate the proposed program. All the agencies acknowledged that the program was worth supporting and expressed confidence in the skills of community organizer Barbara Verni-Lau. However five of the agencies stated that they would not be interested in submitting an application, for reasons including: "outside our core mission" and "over-extended in Asheville programs at this time". One agency expressed some interest, but felt it would be feasible only if they could identify additional grant sources in order to sustain a new staff position. Agencies also expressed concerns about applying to take over a program already proposed by another agency.

The following four options are available:

1. Award the grant to the Coalition of Asheville Neighborhoods.
   Pro: In line with the recommendation from the Housing & Community Development Committee; CAN proposes financial leverage in the form of a foundation grant (not committed but likely).
   Con: There are valid concerns about CAN's ability to sustain the program in the longer term because of the agency's limited financial and staff resources.

2. Request applications from other agencies to operate the program.
   Pro: Provides an opportunity to bring this program under the direction of an experienced non-profit agency with the capacity to attract leverage.
   Con: Not clear whether any applications would in fact be submitted; would significantly delay program implementation;

3. Allocate the funds to the City's Parks & Recreation Department to contract for services directly with the community organizer.
   Pro: Would be quick to implement and ensure maximum coordination with the City's Weed & seed program;
   Con: Opportunity to leverage the funds with other grants or donations would be lost.

4. Cancel the program and reallocate the funds as part of the 2008-09 Action Plan.
   Pro: Increases funding available for other CDBG grant applications currently being considered by the HCD Committee.

Con: Opportunity to continue the work of a skilled community organizer in the Weed & Seed area would be lost.

Staff recommends that Council first decide whether or not to approve the application from CAN, on its merits. If not, then the other three options should be considered. On balance, staff recommends Option 3 (for the City to contract for services directly with the community organizer).

Councilman Mumpower moved to allocate the funds to the City's Parks and Recreation Department to contract for services directly with the community organizer. This motion was seconded by Councilman Russell.

In response to Councilwoman Jones, Parks & Recreation Director Roderick Simmons said that he felt they can house the program within the existing operations. He said the leverage we lose would be the ability to go out and raise money from the community.

In response to Councilman Newman, Ms. Caplan said that CAN was very confident that the Z. Smith Reynolds Foundation funds ($6,000) would be reassigned to them if they were able to take the program over. They were also confident they could get another grant for next year. However, she felt it was unlikely that the Foundation would reassign the $6,000 to the City.

Mayor Bellamy felt that a creative way to accomplish means would be for the City to contract with the community organizer (Ms. Verni-Lau) and in her contract spell out the City's expectations for the $10,000. In addition, Ms. Verni-Lau could also contract with CAN (using the Z. Smith Reynolds grant) spelling out how she will use the $6,000 for other things not included in the City's contract. She didn't think that if Ms. Verni-Lau contracts with the City that it prohibits her from contracting with another agency on different goals.

Councilman Newman was concerned about structuring the program the way Mayor Bellamy suggested. He did feel like this is a new role for CAN, but is consistent with their mission.

Councilman Mumpower felt that CAN has historically been a political entity and an advocacy organization with strong political positions. He felt CAN has no history of being involved in service delivery or management of other people's dollars.

Mr. Joe Minicozzi, President of CAN, explained that CAN was formed about 20 years ago as a 501 (c) (3) organization. They are not a political action committee. He pointed out that one of their objectives from their Charter reads "to provide technical assistance to neighborhood groups and individuals and participating in community affairs." We found this part of our mission with this opportunity with the low income coordinator. During the 20 years, during which time they did manage their budgets, they maintained several staff members through administered grants. He explained how they would, given the opportunity, administer the City's $10,000 grant and his concerns about having two separate grants - creating duplicate management.

Councilwoman Jones' goal is to get the community organizer into the neighborhood and she explained why she felt CAN is the appropriate organization to achieve that goal.

Councilwoman Cape felt that we have a great neighborhood outreach organization who wants to move into another level of responsibility and would support the grant being awarded to CAN, a group of citizens who are taking a responsibility for their own neighborhoods.

In response to Councilman Mumpower, Councilwoman Jones felt that it might be good to have a worksession in about 8 weeks on the roles that non-profits play in the community.

The motion made by Councilman Mumpower and seconded by Councilman Russell carried on a 4-3 vote, with Councilwoman Cape, Councilwoman Jones and Councilman Newman voting "no."

RESOLUTION BOOK NO. 31 - PAGE 110

VI. NEW BUSINESS:

A. ORDINANCE NO. 3594- ORDINANCE GRANTING A FRANCHISE TO OPERATE A PEDAL BICYCLE TAXI SERVICE WITHIN THE CITY OF ASHEVILLE

Director of Transportation and Engineering Cathy Ball said that this is the consideration of an ordinance granting a franchise to operate a pedal bicycle taxi service within the City of Asheville.

Your Chariot Awaits, LLC wants to operate a pedal bicycle taxi service limited to a maximum of five Pedicab vehicles (3 minute stops) within the Central Business District, the River Arts District, and the Historic Montford District. The hours of operation are restricted to not allow the pedal bicycle taxi service to operate during the morning and afternoon weekday commuting peak periods. In addition, the pedal bicycle taxi service is prohibited from operating on public streets where the speed limit is 35 mph or higher *(the statutory speed limit within the City of Asheville is 35 mph)*.

Generally, cities grant franchises to certain services which use city streets, rights-of-way, or other city controlled assets in order to exert a measure of control over the specific services to assure public health, safety, and welfare. The City of Asheville is restricting the pedal bicycle taxi service to certain city-maintained streets in order to minimize negative impacts to orderly and efficient traffic flow.

The hours of operation shall be limited to between 9:00 am to 4:00 pm and between 6:00 pm to 3:00 am Monday through Friday and between 7:00 am to 3:00 am Saturday and Sunday. For City recognized holidays and days on which City-approved festivals occur in the Central Business District, the operating hours may be extended to 3:00 am regardless of the day of the week. The pedicabs are prohibited from operating in any City approved festival or event area where the roadways are blocked including but not limited to the Bele Chere festival except with written permission from the event organizer.

Your Chariot Awaits, LLC shall only use the "Classic Pedicab" based model manufactured by Main Street Pedicab's Inc. All pedicabs shall be of single frame construction, have operable brakes on the front and back wheels, have seat belts for passengers, and be designated as a slow moving vehicle with a reflective sign on the back. An electric assisted motor no greater than 750 watts and one horsepower may be installed on each pedicab.

Pros:

- Enables the City of Asheville to control the impacts of a pedal bicycle taxi service on the transportation infrastructure.
- Enhances and promotes the tourist industry.
- Exposes tourists to downtown Asheville, the River Arts District, and the Historic Montford District.

Con:

- Could impede traffic flow because of frequent stops *(minimal delay)*.

Staff recommends that City Council approve an ordinance granting a franchise to operate a pedal taxi service within the City of Asheville.

When Councilman Mumpower expressed concern about impeding traffic flow, Ms. Ball responded that 12 mph (speed potential of the vehicles) on a 20 mph street was acceptable. She felt the benefits outweigh the risks and they will work with the owner to address concerns raised, if any.

Ms. Ball and Ms. Felicity Herman, owner of Your Chariot Awaits, LLC, responded to various questions/comments from Council, some being, but are not limited to: what communities did City staff survey regarding the safety and traffic flow of this type of service; where will the central location be to house the vehicles and how secure will the facility be; what is the City's ability to terminate the franchise should the vehicles be determined to impede traffic flow; what is the classic Pedicab body size; why is the service being requested to operate until 3 am when the trolleys end at Midnight; and request to make sure the insurance requirements to ensure the safety of the passengers is written into the franchise ordinance.

When Mayor Bellamy asked if the service would provide amplification, Ms. Herman said that she had not thought of that, but would be interested in receiving information on that aspect.

Mayor Bellamy supported Ms. Herman's entrepreneur spirit and wished her much success.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3594. This motion was seconded by Councilman Russell and carried unanimously.

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B. FEDERAL LEGISLATIVE AGENDA

Economic Development Director Sam Powers said that City Council is being provided information concerning three requests that have been received by staff concerning federal issues. He asked for City Council to review the following three requests:

- City staff has been contacted by a non profit group Go21-Transportation Options for the 21st Century (www.go21.org), asking City Council to consider taking a position on two pending bills related to regulation of the railroad industry.

- The City County Bureau of Identification is seeking federal support to purchase an Automatic Fingerprint Identification System, two Live Scan Fingerprint systems, and the software for facial recognition. CCBI is a joint venture between the City of Asheville and Buncombe County. City Council may wish to consider expressing support for this initiative.

- ERC Broadband is seeking federal support to provide an enhanced level of fiber optic connectivity in Western North Carolina. The City of Asheville has relied on fiber optic connectivity for police and fire substations throughout the City. Additionally, as City services expand, so does the need for heightened levels of business continuity and disaster recovery. Increased broadband also increases the potential for growth in technology-based businesses in our area. City Council may wish to consider expressing support for this initiative.

Mayor Bellamy provided Council with copies of her federal legislative issues, in which she requested Council's support. She said if Council wished for more time to consider these items, she would be happy to grant that time, but will continue to work on these issues with other partners across our State:

- Senate Bill 1738 "Combating Child Exploitation Act of 2007" to improve the Internet Crimes Against Children Task Force to increase resources for regional computer forensic labs, and to make other improvements to increase the ability of law enforcement agencies to investigate and prosecute predators.

- HR 1692 "The Fighting Gangs and Empowering Youth Act of 2007" which contains many things that focus on making sure that our youth have alternatives from gangs as well as increase penalties for gang activity.

- Senate Bill 1745 "Departments of Commerce and Justice, Science, and Related Agencies Appropriations Act, 2008" for support of our Weed and Seed program that is funded under this Act.

- "The Safe, Accountable, Flexible and Efficient Transportation Equity Act of 2003" (1) Sec. 9002 - extension of the highway-related taxes and trust fund; (2) Sec. 9003 - extension of tax benefits for alcohol fuels; (3) Sec. 9004 - private activity bonds for surface transportation infrastructure; and (4) Sec. 9005 - all alcohol fuel taxes transferred to highway trust fund.

- PL 110-140 "The Clean Energy Act of 2007" (HR 6) to reduce our Nation's dependency on foreign oil by investing in clean, renewable, and alternative energy resources, promoting new emerging energy technologies, developing greater efficiency, and creating a Strategic Energy Efficiency and Renewables Reserve to invest in alternative energy.

In response to Councilwoman Cape's request for a short period of time to review various requests, Mayor Bellamy said the federal legislative agenda will be discussed at the April 8, 2008, Council meeting.

The following are Councilwoman Cape's requested legislative agenda items, noting that she would insert house and bill references prior to the matter coming before Council again:

- Urge state and federal government to enact policies and programs to meet or beat the greenhouse gas emissions (ghg) reduction targets for the US of 80% reduction by the year 2050.

- Urge US Congress to pass the bipartisan ghg reduction legislation which would establish a national emission trading system.

- Support to fund the expansion of the ERC broadband and fiber optic network in the region for education, medical and emergency service support.

- Lend support to the Land of Sky Council of Government request for funding for a Comprehensive Economic Development Strategy - Regional Growth Management Planning Initiative for Western North Carolina.

Councilman Newman supported Councilwoman Cape's first issue regarding greenhouse gas emissions as those are targets that have to be met to make the appropriate impact.

Councilman Mumpower felt that when we have a national debt of 10 Trillion dollars, everything mentioned will have to come from borrowed monies that our grandchildren will have to pay for and he would not be supportive of any of the requests, not on the basis of merit, but on the basis of borrowed dollars. He would be interested in the following areas (1) continued assured participation from the federal government in the completion of the I-26 Corridor; (2) continuation and expansion of the federal involvement in local drug interdiction, specifically since we are a regional distribution and trafficking center; and (3) credible enforcement in the Asheville area of the illegal immigration law.

Mayor Bellamy asked that Council members provide their items to City Clerk Lipe prior to the established deadline (which will be provided to Council by City Clerk Lipe) in order that the issue can again be discussed on April 8, 2008.

City Attorney Oast said that he is working on the state legislative agenda. He said it is a Short Session this year, but if any Council member has information they would like to be considered to get that information to him. He will provide information to Council at the March 18, 2008, worksession. He anticipates that Council will have a worksession discussion regarding the state legislative agenda at the April 15, 2008, worksession.

Mr. Powers noted that Congressman Shuler's Office has asked for City Council to prioritize the following funding projects: Reid Center, energy conservation retrofits for City buildings, traffic signal preemption, regional public safety training facility and bus replacement.

VII. OTHER BUSINESS:

A. TOWING ORDINANCE DISCUSSION

City Attorney Oast provided Council with our current ordinance which essentially requires the posting of notices in parking lots in the downtown and Biltmore Village areas. It basically describes the size and content of the sign. If you are the owner of a private lot and you don't wish for people to park on that lot, you need to post the signs. It doesn't mean that if you don't post the signs, that you can't have vehicles towed from there, but you are more subject to a fine if you do. This ordinance was adopted pursuant to a special state law to address predatory towing. It's a problem all over the state and nationally. The problem is when you own a lot in the downtown and someone leases a space from you, if someone from out of town parks there, it's an inconvenience to you as the lessor of that space. That does not mean it's not an inconvenience for the person who parked there to have to retrieve their car. He believes the only thing we can do, under the law, is to require the conspicuous posting of those lots, which we do. He didn't know how much follow-up has been done since 2003, but it seems like the number of complaints since 2003 have gone down. We have looked into what has been done in other cities, and some other cities do have requirements like requiring release of a car, if the person whose vehicle is being towed, encounters the tower in the lot where it's being towed from; or requiring notification by the tow operator to the police within 1/2 hour or some time period before towing the vehicle. The ability to regulate any aspect of towing is limited largely by federal law which exempts businesses engaged in commerce carriers or interstate commerce for certain types of state and local regulations. The law was amended in 1995 to allow states to undertake certain types of safety regulations. The State has not delegated that authority to Asheville, except in some of the limited forms in which we have special legislation. We have certain limitations that restrict our ability to regulate this practice. There are competing interests and when the issue came up in 2003 we heard from the people who operate private lots downtown and people who lease these spaces. We have done as much as other cities have done to educate the public and the visiting public about when it's okay to park someplace and when it's not. There are some other things we could do and have done in the past, such as producing a pamphlet explaining the situation and having that distributed to local hotels and motels.

In response to Vice-Mayor Davis, City Attorney Oast said that one of the things that federal law allows states and political subdivisions do is to regulate the price that is charged for these events. Our ability as a municipality in North Carolina is somewhat limited because the state has not given that authority to us, anymore than they have given us the authority to regulate what people can charge for products that they sell. Some cities do regulate the price with no more authority than we have. Some cities have gotten creative in the kinds of regulations that they do prescribe and they mostly relate to timing, the amount you can charge for a non-consensual tow, the amount you can charge for a storage fee and when that storage fee begins to accrue. He believed that the City of Raleigh has regulated that practice. He did not know if Raleigh has local authority to do that or not, but he didn't think they do. He thinks they have

taken this exemption to the federal law and under the umbrella of a safety regulation, and has adopted those kinds of price regulations. He's not sure if their ordinance has ever been challenged in court, however. In view of the heavy regulation of this area by federal law and the limited exemptions for regulation by states and municipalities, he is more comfortable with having specific authority to do what we do. He suggested Council request some increased ability to regulate non-consensual towing from our state legislators.

Vice-Mayor Davis acknowledged Asheville's very limited amount of power regarding predatory towing. He wondered if the community (including the Downtown Association) should take the lead and determine what role the community can play, especially since the City has such limited authority. He also supported asking our state legislators for more control.

Councilman Mumpower believed that the City has the ability to find a point of balance through regulatory action, not community action. He advocated seeking specific regulatory authority (1) to increase the penalties for abuse by the towing companies; (2) regarding storage fees and when they begin. He felt the signs (1) need additional detailed information; (2) larger signs; and (3) larger lettering. Since we can regulate the behavior of taxicab drivers, he wondered if some of the provisions in our taxicab ordinance might be applied to predatory towers. He questioned on-site immobilization and other options before vehicles are towed.

In response to Councilman Mumpower, City Manager Jackson said that the City responds to any report of predatory towing and do an inspection on site. On some occasions we do find that the sign does not meet the Code requirements and we do take action to cite those and enforce the penalties provided by law. We do that on a complaint basis. At this time we don't have a proactive program of periodic inventorying the signs and evaluating them.

Councilwoman Jones supported asking our state legislators for the increased ability to regulate non-consensual towing.

In response to Councilwoman Jones, City Attorney Oast said that oversight of the towing industry is probably regulated in the Attorney General's Office or in the Consumer Protection Division. He said that he would find out what happens after a complaint is received by those agencies.

Upon suggestion of Councilwoman Cape, City Attorney Oast said that the City presently has the authority to put the name of the business (who owns the lot) on the sign.

Councilwoman Cape suggested the following be included in the request for increased regulation: ability to require hours of operation, accepted payment method, access to personal property, and for the ability to develop a certification list of wreckers within our community. She also supported the idea of utilizing our ability to have economic incentives and partner with some business lots downtown after hours. She also supported the idea of an economic development incentive package to some of the business parking lots downtown who would allow parking in the off-hours in their lots.

Councilman Newman supported the suggestions presented and in terms of looking at ways to create more parking downtown, he suggested Council look at leasing private lots that are not used during certain times of the day. City Attorney Oast said the he believed the City of Raleigh uses that vehicle.

Upon inquiry of Mayor Bellamy, City Attorney Oast said that he would report back to Council at their worksession on April 15, 2008.

B. PERSONNEL COMMITTEE

Councilman Newman said that he believes Council is at the point of where our City Council needs more than an ad hoc Personnel Committee as we move forward. He believed that Council needs to address the following questions (1) should City Council create a standing Personnel Committee; (2) who does City Council want to serve on this committee; (3) what is the charge of this committee; and (4) who does City Council want to lead this committee.

He proposed "the creation of a standing Personnel Committee for 2008-09. The charge of the Personnel Committee is to provide leadership and guidance for the City Council on matters related to personnel issues. The Personnel Committee will be responsible for leading the annual review of the three employees who, by our Charter, report to City Council: the City Manager, the City Attorney and the City Clerk. The Personnel Committee will help lead the process for filling any vacancies in these positions.

The Personnel Committee will be comprised of four members, appointed by City Council. The Personnel Committee will have a Chair, appointed by City Council.

The Personnel Committee will be available, as needed, to address any concerns of the City Manager, City Attorney or City Clerk. If the staff of the City Council has concerns or ideas related to their work for City Council, they will be encouraged to consult with the Personnel Committee. If members of City Council have concerns or ideas related to personnel, they will also be encouraged to take them up with the Personnel Committee for initial consideration.

The Personnel Committee will have no direct decision making authority. It will serve in an advisory capacity for City Council. The Committee will meet as needed."

Councilman Newman felt Council would be well served by a Personnel Committee and proposed the Committee be comprised of Mayor Bellamy, Councilman Mumpower, Councilman Russell and Councilwoman Jones. Based on his outstanding professional experience in human resources, he supported the appointment of Councilman Russell to Chair the Personnel Committee.

Councilman Mumpower felt we are trying to fix a problem that doesn't exist. He felt the ad hoc committee of Councilman Russell, Mayor Bellamy and himself to address the very limited personnel responsibilities of the Council is more than adequate to the task. He felt that the Mayor has very limited authority and control in Asheville, but this is an area where the Mayor's leadership is appropriate to the task. In addition, Council has the ability to challenge the Mayor if they have concerns. He would support leaving the ad hoc committee as it currently exists and if it is formalized, he would ask not to be a member.

Councilman Newman moved to create a standing Personnel Committee, whose charge is outlined above, and in light of Councilman Mumpower not being interested in serving, that the Personnel Committee be comprised of three Council members. This motion was seconded by Councilwoman Jones.

Vice-Mayor Davis felt that City Council is a personnel committee that has three employees to supervise. The ad hoc committee (which he was a member of for two years) made sure that there was a regular evaluation of our three employees and if an issue arose about hiring an employee they acted on that. Anything of real gravity was brought to the entire Council. He supported the ad hoc committee structure to remain as is.

Councilman Russell felt that after the replacement of the City Clerk, the Committee should look at whether they need to even continue meeting. He felt that when you have seven people who can makes decisions on staffing, it needs to be done as a body. He did, however, like to have the funnel for their three employees.

Councilman Newman explained the difference between an ad hoc committee and a standing committee.

Mayor Bellamy was not supportive of the proposal as originally presented. The proposal would be the first time the City adopted a resolution supporting four members of Council to a committee - which is legally the majority of the Council. The proposal with 4 members of Council would allow a decision to be made that could have an impact on the 3 individuals that the City Council has oversight over. There is no reason for a formalized personnel committee. The ad hoc personnel committee started when she became Mayor. The personnel committee met three times last year to address reviews and evaluations. She said the personnel committee is in existence because she brought it to Council's attention that their 3 employees had not been reviewed on an annual basis. She asked Council to allow 2 members of Council to serve with her to make sure that their evaluations were done on a consistent annual basis. Our City Attorney went 4-5 years without adequate review. Her goal was only to make sure that our staff had proper oversight and the proper opportunity to be reviewed by their supervisors. There is an existing ad hoc personnel committee and she didn't feel it needed to be a standing committee. The Mayor has always been the lead on personnel issues, except for one time - when 4 members of Council fired a City Manager and they hired a new City Manager. She didn't understand why the structure is changing now.

The motion made by Councilman Newman and seconded by Councilwoman Jones carried on a 4-3 vote, with Mayor Bellamy, Vice-Mayor Davis and Councilman Mumpower voting "no."

Councilman Newman moved to appoint Mayor Bellamy, Councilman Russell and Councilwoman Jones to the Personnel Committee, with Councilman Russell as Chair. This motion was seconded by Councilwoman Jones.

Mayor Bellamy reiterated that the Mayor has been the lead on personnel issues. She was the lead on hiring City Clerk Lipe and was discouraged that her role has changed without any true articulation on why.

Councilwoman Jones supported Councilman Russell as Chair in that he has 15 years experience in human resources.

Mayor Bellamy noted that she has sat on interview panels and decision-making panels for other organizations outside City government. She is also on the state-wide panel for a replacement of the Executive Director for the North Carolina Metro Coalition of Mayors. In addition, she has 10 years of human resources experience and also has experience in hiring a government employee.

Councilwoman Cape said that the Mayor, unlike the rest of Council who don't have offices in City Hall, has the most direct contact with people on a daily basis and that is a particular relationship that probably creates more engagement on a continuous basis with the 3 people that Council hires. Staff is working with the Mayor all the time, but in terms of checks and balances, she felt those 3 people need the option to talk to people who are not in the office all the time and get their feedback and prospective on things. She would have to support Councilman Russell as Chair.

Mayor Bellamy felt Councilwoman Cape's argument may hold water if she wasn't actually still a member of the committee, but she is still a member - just removed as the chair. Any number of employees have the right to go to any Council member and express their concerns.

Councilman Russell believes he can serve as Chair in a neutral way and explained this is not personal, but practical.

When Councilman Russell expressed concern that there have been about 4 personnel changes within a very small corner of the building, Councilman Mumpower responded that none of those positions involve the 3 people City Council is responsible for - those changes are under the authority of the City Manager. Mayor Bellamy also noted that Maggie Burleson retired, City Clerk Lipe is moving to another department, Janet Rhodes retired, Nancy Farmer's position was on a rotational basis, Phyllis Corns moved to another department, Marcia Strickland is the new Neighborhood Coordinator, Lauren Bradley was promoted to Assistant to the City Manager, and Laurie Saxton is now the Public Information Officer.

The motion made by Councilman Newman and seconded by Councilwoman Jones carried on a 4-3 vote, with Mayor Bellamy, Vice-Mayor Davis and Councilman Mumpower voting "no."

C. BOARD & COMMISSION VACANCIES

Vice-Mayor Davis announced vacancies on the Citizens-Police Advisory Committee (a west representative), the Asheville-Buncombe Historic Resources Commission, the Recreation Board, and the River District Design Review Committee. He urged the public to submit their applications by Thursday, April 10, 2008.

D. UNC-ASHEVILLE MEN'S BASKETBALL

Vice-Mayor Davis recognized UNC-Asheville's Men's Basketball Team that had one of their best seasons ever. He also urged the public to attend the Women's Big South Conference.

E. CLAIMS

The following claims were received by the City of Asheville during the period of February 1-21, 2008: Junay Hickey (Police), Heritage Kitchens (Fire), Cici Weston (Water), Timothy Chapman (Police), Doris-Marie C. Martin (Water), Margaret Whiteside (Fire) and Antonio Cruz (Police). These claims have been referred to Asheville Claims Corporation for investigation.

F. LAWSUIT

The City was served with a Complaint on February 8, 2008, which is generally described as follows: Asheville Jet Inc. d/b/a MillionAir v. City of Asheville, Asheville Regional Airport Authority, and the County of Buncombe. The nature of the proceeding is for breach of contract; monetary damages; declaratory judgment; and injunctive relief regarding a lease between the Airport Authority and Encore. The Airport Authority insurance coverage may provide a defense on this. That coverage may extend to the City as well. We are investigating this and a determination should be made soon.

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Ms. Donna Bateman thanked Council for their work in Pritchard Park. She requested a close parking place be given to the Park Warden, along with lighting and heat in her office area.

Mr. Reid Thompson asked how the Greenlife Grocery Store (which states on their 2003 incomplete application form is 20,412 square feet) can be legally permitted without a sprinkler system, since any structure over 12,000 square feet that gets rehabbed in the State of North Carolina is required to have a sprinkler system. Mayor Bellamy asked that City Attorney Oast respond in writing to Mr. Thompson's concern with a copy to City Council.

Mayor Bellamy read the following staff periodic up-date dated March 11, 2008, on the status of the Greenlife Grocery conditional zoning application: "Earlier this afternoon, City staff met with representatives of Greenlife Grocery to discuss the status of their application. Greenlife

has now committed new resources in the form of project manager Reggie Vachon to facilitate the progress of this application. Mr. Vachon has been meeting with several key staff to explore preliminary technical issues and has also been meeting with the site architect and landscape architects to solidify the basic elements of the site design. Mr. Vachon has also been working closely with the Greenlife owners on the budget and finance aspects of the project which are critical and essential to the overall success. All in attendance agreed that communication with the community was important and the Greenlife representatives committed to arrange for a community meeting once plans were further along. The rough timeframe that was discussed is as follows: April - Internal budgeting and finance work; Select a surveyor and engineer; May - Conduct and complete survey work; Refine site plan work; Initiate engineering site plan work; Apply and receive water and sewer allocation requests; June - Submit complete application to City of Asheville; Attend Technical Review Committee meeting; and July - Hold community meeting (applicant may choose to hold community meeting prior to Technical Review Committee). Staff will continue to update council as progress is made."

Closed session

At 8:20 p.m., Councilman Mumpower moved to go into closed session for the following reasons: (1) To consider the qualifications, competence, performance, character, fitness, conditions of appointment of an individual public officer or employee. The statutory authorization is contained in G.S. 143-318.11(a)(3); and to prevent the disclosure of information that is confidential pursuant to G.S. 160A-168, the Personnel Privacy Act. The statutory authorization is contained in G.S. 143-318.11(a)(2); and (2) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: City of Asheville; and BFS Retail and Commercial Operations, LLC. The statutory authorization is contained in G.S. 143-318.11(a)(3). This motion was seconded by Councilwoman Cape and carried unanimously.

At 8:50 p.m., Councilman Newman moved to come out of closed session. This motion was seconded by Councilwoman Jones and carried unanimously.

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 8:50 p.m.

Leisha Lipe
CITY CLERK

Terry Bellamy
MAYOR

Tuesday – March 18, 2008 - 5:00 p.m.

Worksession

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; Councilman William A. Russell Jr.; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Keisha Lipe

Absent: None

WORKSESSION RULES

Mayor Bellamy felt that since this was the first worksession in a couple of years, worksession rules should be established, which will be formally adopted at a formal meeting. There was a brief discussion and consensus of the majority of Council on the following items:

- Worksessions will be held on the third Tuesday of each month
- Worksession will begin at 3:00 p.m. (Councilwoman Jones noted that she may not be able to be at the 3:00 p.m. worksession since it a change from the 5:00 p.m. meeting time.)
- Public comment will not be allowed at worksessions (with Council having the ability to waive the rules, if necessary)
- Limited use of taking formal action at a worksession (with notice on the worksession agenda that it would be the intent of Council to take action and public comment being allowed on that matter)
- Public speaking time limits same as formal meetings
- Board/Commission interviews and/or appointments to be considered at a worksession with interviews and formal actions being taken at the next formal meeting
- Meetings with other governmental bodies will be held at worksessions (but if the worksession date is not available to the other body, Council may schedule such meetings at other times, including formal meetings or special meetings), understanding that Council can adjourn the meeting to re-convene the meeting at another location
- Effective April 1, 2008, Council and staff reports will be due to the City Clerk 8 days before the formal meeting or worksession.

BUDGET CALENDAR/GENERAL OBLIGATION BONDS

Chief Financial Officer Ben Durant said that this is the consideration of the proposed Fiscal Year (FY) 2008-09 Budget Preparation Schedule and a possible November 2008 General Obligation (G.O.) bond referendum.

Mr. Durant presented the FY 2008-09 budget schedule (important dates that involve Council, including the proposed dates for budget worksessions in May), reviewed the Capital Improvement Process (CIP) and asked for direction on enhancing the CIP via a G.O. bond referendum.

Regarding the budget schedule, (1) it is a tight budget year; (2) staff is currently completing technical reviews; (3) there will be a budget preview at the April 15, 2008, worksession; and (4) budget worksessions are scheduled for May and June, 2008. The FY 2008-09 budget is scheduled for final adoption on June 17, 2008.

He also reviewed a schedule that would need to be followed in order to hold a General Obligation (G.O.) bond referendum in November 2008. The schedule outlines the various steps that would need to be followed over the next nine months and shows how the G.O. bond schedule would overlap with development of the FY 2008-09 Capital Improvement Program that will take place as part of the normal budget process. The CIP process (1) coincides with the operating budget process; (2) pay-as-you-go funding with some debt for large equipment purchase (fire trucks); and (3) approximately $9.5 million allocated annually for capital and debt service.

He explained the different types of debt are (1) installment financing (CoPs) - renovation and construction of facilities (municipal bond, fire stations, parking garages); (2) lease-purchase - large equipment; and (3) general obligation (GO) - new public initiatives (parks/greenways, sidewalks).

He then reviewed a chart showing the City's existing debt service, and a chart showing the history of our G.O. bond history.

Pending policy questions/issues are (1) approval of the FY 2008-09 budget schedule; (2) should we continue with current CIP process or pursue an enhanced CIP with a G.O. referendum; (3) how should the process be structured? Blue Ribbon Committee; (4) what parameters should guide the process? dedicated revenue source; or types of projects (targeted or general); and (5) is now the right time (economic uncertainty).

Throughout discussion, Mr. Durant responded to the following various questions/ comments from Council, noting that information he was not able to provide, he would research and provide Council with that information: what is the interest rate differential on G.O. bonds vs. CoPs; if the City goes with a G.O. bond, how much money will the $1 Million debt coming off the books let us borrow; which of these different types of debt will allow us to leverage other public and private dollars; regarding the CoPs, is there an essentiality test; can bonds be placed on the ballot outside of Council action, e.g., a petition; what is the feasibility of doing a bond with another governmental entity; what is the amount of debt incurred with cities Asheville's size; are CoPs bonds limited on the type of assets invested in; and which of these types of debt will allow us to achieve more outcomes.

Councilman Mumpower supported a G.O. bond vs. CoPs because of public input. However, we are in a clear state of economic turmoil and our timing to issue bonds could not be worse. He would support using the $1 Million debt coming off our books be used to help ourselves on our budget.

Councilwoman Cape agreed that we are not in a stable economic climate and facing a tight budget year. She was concerned about the intensive job staff would need to do to have a G.O. bond on the November referendum. She also felt there was not enough time to fully educate and engage the community so they understand what the bonds would be used for. She supported beginning the process at this time, but not with the referendum until 2009.

Mr. Durant said that staff will need to do some type of needs assessment that truly addresses our long-term capital needs, as staff is currently operating under the current CIP process of pay-as-you-go funding. Another key step will be to engage the community in getting their input as to what they feel the City's long-term capital needs are. Staff would also need to determine our bond capacity. After that background work is completed, staff can report back to Council with their research and then Council can direct staff at that point. Those steps can be done without necessarily deciding to do a G.O. bond or not.

Mr. Durant noted that the cost of issuance for a G.O. bond is pretty significant so to justify that level of expense, Council needs a significant package of more than $10 Million.

Mayor Bellamy challenged staff to look at way other municipalities have been able to secure G.O. bonds without increasing taxes. She is interested in the overall picture of our facilities, with her primary focus on parks and recreation facilities, especially ones that are in disrepair and the ones that have fire stations attached. She stressed that we need to take care of the assets that we have. She would like to know from the Master Planning process not just the programming process regarding the facilities, but what is the plan for the facilities in the future.

City Manager Jackson said that the analysis of our maintenance needs and a comprehensive inventory of capital improvement needs is something we have embarked upon.

Councilwoman Jones asked if we were to follow a process to have a G.O. bond referendum in November, by the time we go through all the steps that it would take to sell the bonds, would we issue debt in time where we would have a new debt service payment next year associated with those new bonds. Mr. Durant replied probably not.

City Manager Jackson said Council's choice is whether or not to have another $1 Million allocated for capital projects in the current year, or $1 Million to offset gaps in General Fund revenues and expenditures for the FY 2008-09.

Mr. Durant said that given how far we are into the budget process and the analysis they have to do to balance the budget, he asked that Council allow him to start on July 1 to start the analyses on July 1 regarding whether they pursue a G.O. bond in the near future. He said there is a lot of preliminary work staff can do before July 1, but have July 1 as the official start date.

Mayor Bellamy confirmed by consensus of the majority of Council to instruct staff to (1) begin preliminary work on whether Council should pursue a G.O. bond, with the comprehensive analyses, etc. beginning on July 1; and (2) provide Council with an update in September to coincide with the first quarterly report.

STATE LEGISLATIVE PRIORITIES

City Attorney Oast said that the North Carolina General Assembly will convene in its "short" session on May 13, 2008. As in the past, the matters that may be considered in the short session are limited, and there is a fairly narrow window for submitting bills to the bill drafting division, and for introducing them in one chamber or the other.

He described the types of bills that are eligible for consideration. Of significance to us is local bills, which may provide means to seek changes to the current local law regarding predatory towing. HB 758 regarding the reconfiguration of the boundary between Asheville and Woodfin in the areas near UNC-A and Newbridge, a local bill from 2007, was referred to a committee.

The relevant deadlines for local bills are May 21, 2008, for submitting bills to the Legislative Services Office (bill drafting), and May 28, 2008, for introduction in either chamber. These deadlines are established by joint resolution.

Council is scheduled to discuss its State Legislative Agenda at the April 15 worksession. This update is provided to make you aware of relevant deadlines and procedural limitations, and to remind you of matters still pending from last year. He reviewed the list of bills introduced in 2007, and remaining eligible for consideration in 2008 as having passed one house or the other ("crossover" bills). There may be other bills that remain eligible for consideration pursuant to other rules.

In response to Councilwoman Cape, City Attorney Oast said that he reviews the titles of the bills and if he sees something of interest, he investigates it more and brings it to Council's attention.

City Attorney Oast noted that he would provide Council with a copy of the resolution adopted last year in case Council wishes to reaffirm their support for those bills. He also suggested Council provide him with specific bills they wish to support one week before April 15, noting that he would do his best to be prepared for the April 15 worksession no matter when Council provided him that information.

Councilman Mumpower said that the Drug Commission has asked for Council's support in asking our state legislators to explore legislation to prohibit an over the counter hallucinogen drug which available in head shops in Asheville and convenience stores.

COUNTDOWN TO ZERO

Councilwoman Jones explained her invitation from "Countdown To Zero" to the City of Asheville to join community collaboration to reduce euthanasia among healthy animals.

As a brief background, in January the Buncombe County Board of Commissioners made the pledge that by 2012 no healthy animals would have to be euthanized in Buncombe County. The following organizations formed this coalition entitled: Countdown to Zero.

Humane Alliance - spay neuter clinic
Mimi Paige Foundation - public education, creates and produces commercials for radio and television
Asheville Humane Society
Animal Compassion Network - foster adoption network
Brother Wolf Canine Rescue - foster adoption network
Humane Society of Buncombe County - feral cat program
Asheville Kennel Club - member club of the American Kennel Club (performance dogs, i.e. show, field, obedience
Buncombe County Sheriffs Department
Buncombe County Government

Many positive things are happening in our community to improve the tragic necessity of euthanasia in Buncombe County. One recent example, the Humane Alliance has just purchased a new building and will in effect become the training center for veterinary students from universities all across this country in the area of high volume spay/neuter.

The county and city's animal control ordinance are unique to the rest of the state and many parts of the country. As a result national animal welfare organizations are looking to Asheville as groundbreakers. We all have the same goal to lower the number of homeless animals. The number of animals euthanized is not only tragic, 41 tons of animals went to our landfill last year but it is also expensive. Tax dollars could be utilized far better.

The ASPCA is looking to target Asheville next year; this would mean attention and reward.

As you can see we have the groups together to work collectively to accomplish this. We want and hope to gain community support. We know that the city has accomplished incredible things and that is why we hope that to add the City of Asheville to the coalition.

She requested Council support the City of Asheville as a collaborating partner in Countdown to Zero and that we authorize someone on our animal control staff to participate.

In response to Councilman Mumpower, Councilwoman Jones said that there are no dollar expectations associated with this request.

Since it was the consensus of Council to support the City of Asheville as a collaborating partner in Countdown to Zero and that someone on our animal control staff participate in the coalition, the City Manager was instructed to place this item on the Consent Agenda for next week.

TRAFFIC CALMING POLICY AND PROCEDURES

Assistant Director of Transportation and Engineering Ken Putnam said that Council requested on February 19, 2008, a discussion on the City's current traffic calming policy and procedures, which discussion was initiated by Councilman Newman.

Specifically, Councilman Newman wanted to discuss the possibility of focusing the City's efforts on low-tech and low-cost strategies such as speed humps rather than more expensive and controversial measures that have been previously used. Then maybe an action plan could be developed to provide traffic calming relief along residential streets over the next several years.

The current policy, which was approved during February 2000, set forth the criteria and procedures to follow regarding the installation of traffic calming measures along the City's residential streets. The subject policy requires a lot of effort from the affected citizens and City staff. It is important to involve as many people as possible in making decisions regarding the type(s) of traffic calming devices to use because it is difficult if not impossible to reach 100% agreement. The primary goal of traffic calming is to slow vehicles down and/or to discourage "cut-through" traffic from using residential streets.

Under the current policy, the measured 85th percentile speed must be more than 5 mph higher than the posted speed limit *(or the statutory 35 mph speed limit)* or the traffic volumes along the specific residential street must be greater than 1,000 vehicles per day in order for the residential street to be considered for traffic calming measures.

Since the approval of the current traffic calming policy, projects have been completed along 10 miles +/- of various residential streets throughout Asheville at an estimated cost of about $300,000 including budgeted funds and private funds.

According to General Statute sec. 136-30, all traffic control devices including traffic calming measures should meet the criteria set forth in the current edition of the Manual on Uniform Traffic Control Devices which is published by the Federal Highway Administration. The purpose of the subject manual is to ensure the consistent use of traffic control devices throughout the state and nation in order to minimize driver confusion and expectations. Excessive use or misuse of traffic control devices causes them to lose their effectiveness and encourages drivers to ignore their intended messages.

Possible strategies include on-street parking, ALL-WAY Stop intersections, posted speed limits, pace car programs, "Keep Kids Alive Drive 25" program, and speed humps.

- On-street parking is probably one of the most effective treatments if not the most effective treatment that can provide immediate positive results with no associated costs. He is a strong advocate of this specific treatment and he encouraged its use along residential streets whenever possible throughout the City of Asheville. According to the City Code of Ordinances sec. 19-140, a clear travel width of 10 feet is to be maintained at all times. *(Asheville Fire and Rescue has suggested the possibility of increasing the clear travel width to 12 feet)*. Therefore residential streets that have a width of at least 17 feet can accommodate on-street parking along one side and residential streets that have a width of at least 24 feet can accommodate on-street parking along both sides. As a general rule, on-street parking is allowed along all residential streets meeting the width criteria unless there are specific issues that would warrant a parking prohibition at a specific location and/or along a section of a residential street. For example, the Sanitation

Division might have difficulty in providing service along a specific residential service and after an appropriate review; on-street parking might be prohibited at a specific location for a specific day.

- Under certain circumstances, ALL-WAY Stop intersections could have a positive impact on lowering speeds. Although the primary purpose of a STOP sign is to assign right-of-way at an intersection, lower speeds could be achieved if certain conditions exist including low to moderate traffic volumes, intersection sight distance issues, street length of about one mile +/-, and intersections spaced to be able to "break" the street length into thirds. Currently, we are testing the subject treatment at two specific locations, one along West Chestnut Street from Montford Avenue to Broadway and the other one along Michigan Avenue from State Street to Haywood Road.

- Posted speed limits can be effective provided they are set at levels that encourage drivers to accept them as reasonable. Typically, effective compliance is achieved when speed limits are set at or near the 85th percentile speed. As a general rule-of-thumb, speed limits along residential local streets are typically set at 25 mph and speed limits along residential collector streets are typically set at 30 mph. The City of Asheville maintains a total of 394 miles of streets including streets with an average pavement width less than 16 feet. There are posted speed limits *(authorized by ordinance)* ranging from 10 mph to 30 mph along 136 miles *(35%)* of these city-maintained streets. The remaining 258 miles *(65%)* have a 35 mph *(statutory)* speed limit. It should be noted that 35 mph speed limit signs might be in place along many of the streets included in the 258 miles but most of the streets would be unposted.

- Pace car programs are citizen-based traffic calming initiatives that encourage citizens to proactively promote driver responsibility and street safety through a unique educational and awareness campaign. Citizens and neighborhood groups participate on an annual basis by pledging to obey traffic laws and traffic control devices not only in their specific neighborhood but throughout the city that they live and work in. Citizens that participate can place a decal on their vehicle indicating their participation. The idea behind the subject program originated in Boise, Idaho, during the year 2000 and is spreading throughout the nation and now includes Durham and Greensboro, North Carolina.

- "Keep Kids Alive Drive 25" is a citizen-based traffic calming initiative targeting the observance of the residential speed limit which is typically set at 25 mph. This program which is similar to the pace car programs empowers residents to proactively take responsibility for their driving behavior and those of their neighbors at a grassroots level. Community relations are improved when residents and community leaders work together to develop and grow the campaign. Encouraging responsible behavior behind the wheel can decrease or eliminate the use of "expensive" traffic calming devices and perhaps avert the need for increased police presence. Studies have shown a 16 percent decrease in average speeds from the subject program.

- Speed humps are one of several traffic calming devices that use forces of vertical acceleration to discourage speeding. Speed control through vertical deflection is achieved from the discomfort experienced by drivers traversing these devices and the subsequent speed reduction needed to reduce the discomfort. They are typically rounded raised areas of asphalt pavement that are either 14 feet or 22 feet long and are spaced from 300 feet to 600 feet apart *(they are difficult to construct precisely so a construction tolerance on the height is generally specified)*. Speed humps should be placed at mid-block locations, along straight sections of a street, and along street grades less than eight percent. On average, speeds have been observed to be reduced between 20 and 25 percent. They can cause an approximate delay of between three and five seconds per speed hump for fire trucks and up to 10 seconds of delay for an ambulance with a patient.

He has been researching another type of speed hump *(Traficop)* that is manufactured with a composite of long wearing recycled rubber and fuel and weather resistant polyurethane compressed at over 150 tons that comes in modular units that are bolted to the street. For street widths equal to or less than 22 feet, they are configured in pairs *(one device in each opposing lane of traffic)*, which minimizes emergency vehicle delays *(these vehicles can straddle the devices)*. A possible negative impact to this type of speed hump would be the reaction of a snow plow when it strikes the device.

Although it might be possible to streamline our current traffic calming policy, it could still involve a lot of effort from residents and staff because it is very difficult to achieve consensus. One of Councilman Newman's suggestions to possibly limit the traffic calming devices to speed humps and concentrate these devices in high children populated areas such as schools, libraries, and parks has merit and should be discussed in greater detail. A budgeted funding plan for this type of project could probably be established and achieved in a reasonable timeframe with measurable results.

The citizen-based traffic calming initiatives should be pursued and could be funneled through the Transportation & Engineering Department, the Police Department, and the Neighborhood Coordinator. If directed by City Council, staff can research the pace car and the "Keep Kids Alive Drive 25" programs in greater detail. There is a local citizen that has an extensive knowledge of the "Keep Kids Alive Drive 25" program and she has offered her assistance.

Throughout discussion, Mr. Putnam responded to various questions/comments from Council, some being, but are not limited to: is it safe to have on-street parking on 17-foot streets; what is the typical price of a speed limit sign; how many speed limits would need to be installed for one mile of streets in the City; why do speed humps have to be next to each other on a street, or can they be off-set; need to have coordination between the Public Works Department and Engineering Department regarding Americans with Disabilities Act (ADA) compliance; suggestion of a stencil on the approach to a sidewalk ramp if the other side of the street is ADA accessible; are there a lot of additional opportunities to use the on-street parking strategy; when speed humps are installed, what type of signing is required and why; briefly what is the process for implementing traffic calming on a residential street and what is the communication process with the residents on the affected street; and a request to ask staff to consider an appeal process for the 40% of residents who do not wish for traffic calming on their street.

Councilman Newman noted that some of the traffic calming techniques require an enormous amount of signage, which are aesthetically out of place in the community. He felt our traffic calming strategy should coincide with the Safe Routes to School strategy. He felt there should be a single basic plan using these kinds of ideas (funded at a basic level) to install sidewalks and traffic calming mechanisms in key areas that are especially important to our children, e.g., around parks and schools.

Councilman Mumpower was not in favor of obstacles in our streets as they are expensive and marginally effective, in addition to being a concern of the emergency vehicle operators. He advocated for stronger enforcement of our existing laws on a random and active intense basis throughout the City.

Councilwoman Jones said that in conjunction with the Safe Routes to School Program, she hoped we can identify a school in the City limits and dovetail that Program with the Kids Alive Drive 25 and the Pace Car Programs.

At the request of Mayor Bellamy, Mr. Putnam said that he would look into several concerns raised by the Kenilworth Presbyterian Church on Chiles Avenue regarding the loss of on-street parking.

Mayor Bellamy noted that the State funded $250,000 for the Safe Routes to School Program for Emma.

Councilman Newman felt that the City should have a policy on traffic calming for our community with a near-term plan of what we would like to see and an appropriate level to fund the policy with the kind of traffic calming strategies outlined.

TRAFFIC IMPACT STUDY

Assistant Director of Transportation and Engineering Ken Putnam said that a concerned citizen asked City Council to review the current policy and procedures for traffic impact studies *(analyses)* to determine if any changes are needed to make sure the final documents address the possible broader impacts to the existing street infrastructure as a result of a proposed development project.

In general, the concerned citizen believes the scope of work for a traffic impact study *(analysis)* needs to be expanded. For example, the concerned citizen believes the scope of work for the Ellington Hotel project was too narrow and that it should have included the streets and intersections between the project site on US 25 (Biltmore Avenue) and the Grove Park Inn.

The purpose of a traffic impact study *(analysis)* is to determine the possible impact that the anticipated traffic for a proposed development at full build-out conditions could have on the existing street infrastructure typically during the morning and/or afternoon commuting peak hour(s). The traffic impact study *(analysis)* should identify all possible reasonable mitigation improvements that might be needed to offset any negative impacts to the existing street infrastructure. During the overall review process, some and/or all of the possible reasonable mitigation improvements could be made conditions of approval for a specific development project.

The procedures/criteria for traffic impact studies *(analyses)* required by the City of Asheville are set forth in the Unified Development Ordinance in Section 7-11-6. These procedures are based on nationally recognized methodology and are consistent with communities throughout North Carolina including Charlotte, Durham, Greensboro, Hickory, High Point, Raleigh, Wake County, and the North Carolina Department of Transportation. In addition, the procedures are consistent with the Tennessee Department of Transportation.

Key steps in determining the need for a traffic impact study (analysis) and if needed, the scope of work or area of influence is listed as follows:

1. Determine the anticipated traffic that the development project could generate at full build-out conditions based on the most current version of Trip Generation methodology. A traffic impact study *(analysis)* is required by the City of Asheville when the total peak hour trips equal or exceed 100 vehicles per hour *(The Trip Generation methodology is published by the Institute of Transportation Engineers and is based on information that has been obtained from the research and experiences of transportation engineering and planning professionals throughout the nation. This methodology is recognized as providing the best estimate in determining the number of vehicle trips that a proposed development project could generate).*

2. Determine the annual traffic growth rate to be used to "grow" the existing traffic volumes to background conditions *(The annual traffic growth rate is typically based on past traffic volume and population histories and generally includes a factor for anticipated growth from approved developments. The annual growth rate generally falls in the two to five percent range in the City of Asheville. Background conditions are defined as the conditions representing the existing traffic volumes projected to the full build-out year for a specific development project using an annual growth rate. Under certain conditions,*

the background conditions could also include the anticipated traffic from already approved development projects in the immediate area).

3. Determine the scope of work or area of influence. Generally, the scope of work or area of influence for a specific development project is determined by beginning at the site and moving out in all directions identifying intersections that will have a 10 percent or more increase in the peak hour traffic volumes as a result of the additional traffic generated by the development project.

4. Identify any special condition(s) and/or issue(s) regarding the proposed development project and its location that should be addressed in the traffic impact study *(analysis)*.

Traffic impact studies *(analyses)* are typically submitted with other pertinent information by the scheduled due dates for Technical Review Committee meetings. Traffic impact studies *(analyses)* should be submitted, reviewed, and approved before the development project moves to the Planning & Zoning Commission and the City Council.

Although there is an element of subjectivity involved in preparing traffic impact studies *(analyses)* because of the necessary assumptions that need to be made, they are a good tool in assessing the possible impacts that a development project could have on the existing street infrastructure including nearby intersections. Every effort is made to ensure that the reports that are prepared for development projects within the City of Asheville address all of the relevant issues for a specific development project. Every project is reviewed on a case-by-case basis and improvements to the overall process are implemented as soon as they are identified.

One suggestion that could be considered as an improvement in the review process would be to remove the "shall" requirement in identifying the 100 vehicle per hour threshold for requiring a traffic impact study *(analysis)*. There are times, depending on a development project's location, that a traffic impact study *(analysis)* would not be needed although the threshold has been satisfied and there are times that a traffic impact study *(analysis)* would be needed although the threshold has *not* been satisfied. For example, a traffic impact study *(analysis)* for a project with a proposed single access point onto Hendersonville Road that is anticipated to generate more than 100 vehicles per hour might not be needed because an adequate street infrastructure is already in place. Or, a traffic impact study (analysis) for a project that is anticipated to generate less than 100 vehicles per hour might be needed because the project location could be near high traffic volume streets, intersections, or existing generators. This change would give staff more flexibility in determining the need for a traffic impact study *(analysis)*.

In response to Councilwoman Cape, Mr. Putnam said that staff can establish some criteria that must be met to enable the Traffic Engineer to determine whether or not to require a traffic impact study.

At the suggestion of Mayor Bellamy, Mr. Putnam said that he would include a paragraph on the appropriate staff reports to Council outlining what streets the traffic impact study took into account.

ASHEVILLE POLICE DEPARTMENT'S EFFORTS TO IMPROVE LOCAL TRAFFIC SAFETY

Police Chief Bill Hogan provided Council with the following information on the Asheville Police Department's (APD) efforts to improve local traffic safety.

Traffic management in Asheville has generally been the responsibility of the Traffic Engineering Department, while daily traffic safety concerns have been the responsibility of Asheville police. In recent years, major strides in both of these areas have been made as a result of traffic engineers partnering with law enforcement to help keep motorists and residents safe.

From the law enforcement perspective, highway safety is of vast importance in light of the number of motorists who travel in and around Asheville each day. In a typical year, more people are killed on roadways from vehicle crashes than from other causes.

Overall, the APD receives more complaints regarding traffic issues than any other type of complaint annually. To this end, the police department works toward enhancing highway safety in many different ways.

Since April 2002, the APD has employed a Regional Law Enforcement Liaison for the North Carolina Governor's Highway Safety Program (GHSP) to act as a highway safety campaign coordinator for 9 western counties. Consistent coordination and implementation of campaigns such as Click It or Ticket, Booze It & Lose It, and No Need 2 Speed have been established. We regularly partner with other agencies to coordinate these activities.

In 2007, the APD was awarded a $200,000 grant by the National Highway Traffic Safety Administration (NHTSA) to conduct a project related to night-time safety belt enforcement and reducing impaired driving offenses. This was a successful project for both APD and NHTSA. Also in 2007, the North Carolina GHSP awarded the APD with a $175,000 grant to fund a Traffic Safety Unit dedicated to enforcement, education, crash reduction, and investigation of serious and fatal crashes.

The APD maintains an internal strategy for dealing with traffic enforcement, utilizing crash data, and handling citizen complaints. The following departmental policies were established to streamline these procedures and to ensure that they are followed:

- Accident Investigation Policy # 2320; Outlines the necessity and purpose of traffic crash investigation.
- DWI Enforcement Policy # 2361; Purpose of and guidelines for effective impaired driving enforcement.
- General Traffic Enforcement Policy #2360; General guidelines for enforcement of traffic laws and highway safety.
- Traffic Checkpoints Policy # 2363; Policy outlining requirements for checking stations conducted by officers.
- Traffic Direction Policy # 2330; Guidelines for employees to direct traffic for various purposes.
- Traffic Engineering Policy # 2350; Requires officers responsible for crash reduction efforts and enforcement efforts to maintain contact with traffic engineering for a coordinated response.
- Traffic Support Services Policy # 2340; Directs Police employees to assist motorists when necessary to obtain needed assistance when traveling.

These policies provide guidelines for our established procedures. Additionally, these policies were developed with consideration given to the Commission on Accreditation for Law Enforcement Agencies' (CALEA) standards, to which nationally accredited departments must adhere. Specifically, CALEA standard #6, "Traffic," governs the processes and procedures that enable the agency to execute its traffic related responsibilities and services. These standards also govern relationships with motorists, pedestrians, courts, and prosecutors, as noted in the policy examples below.

Crash Data/Reduction: Each six-month period, officers review crash data and identify the top locations in each district for motor vehicle crashes.

Once a location has been identified, enforcement, education, and, if necessary, engineering efforts are put into motion to alleviate crash frequency and severity at each location. Priority is given to these locations for enforcement efforts because the aim is to reduce property damage, injuries and deaths.

Citizen Complaints: With the Traffic Unit in place, all traffic complaints are routed to the Traffic Safety Unit initially from all sources and then an evaluation is made to determine the depth and scope of response needed. Then a plan is established to analyze and deal with each complaint area. If complainants so choose, a follow-up contact is made in which they are provided with information concerning our efforts.

A speed display trailer is available for use by officers to aid in addressing citizen complaints about speeding on their respective streets. All that is required for this is that a citizen or an officer request that it be deployed and the APD will attempt to schedule it.

Officers go out and evaluate the street to make sure that a safe place exists to place the board so that it does not create a hazard. (Otherwise, there may be the potential for vandalism.) The speed board has software that allows officers to complete a "speed study" for streets where it is deployed.

Education Efforts: Ongoing community meetings are regularly attended. Traffic issues are covered during the regularly held Citizens Police Academy. The APD also works with and emphasizes high school programs such as "WNC Promfest" and the high school safety belt program, "R U Buckled."

The APD is currently researching a relatively new program commonly referred to as the "CAT Program," or "Collision Avoidance Training" for teenagers. This allows parents and teenagers to enroll in a class taught by law enforcement officers which teaches these new drivers the importance of safe and defensive driving techniques.

Throughout discussion, Chief Hogan responded to various questions/comments from Council, some being, but are not limited to: what kind of research is the City doing on the "CAT Program"; how active are routine patrol cars involved in traffic enforcement; how many times in the last 30 days was the speed display trailer used; what percentage of our community speeds; and is the Highway Patrol writing tickets in the City limits.

Councilman Mumpower supported persistent random enforcement. He questioned what we could do to create a renewed respect for police cars and the risk factors that are attached to that respect when speeding laws are violated.

In response to Councilman Mumpower, Chief Hogan said that his staff has requested to purchase, through some federal seizure money, ten additional radar units.

Councilwoman Cape agreed with enforcing our laws, but not necessarily with creating a community that lives in constant fear of getting a ticket. She felt we must cultivate other ideas of how you respect a neighborhood.

Councilwoman Jones said the science is clear that 10% of people will change their behavior if they are scared. For the other 90%, you have to use other methods, like education. She felt we do need to increase our enforcement but fear is not what will get you where you really want to go as a community.

In response to Mayor Bellamy, Chief Hogan said that with the new electronic citation equipment, it allows officers to process the license information quickly and gets the officer out enforcing again. He said they are well on their way to get the equipment installed and employees trained.

Councilman Mumpower asked Council if there was any support for asking Chief Hogan to come up with a proposal to strengthen our enforcement of traffic laws in the City of Asheville.

Councilman Newman felt that Councilman Mumpower is asking for very clear direction at this worksession and that is out of order.

Vice-Mayor Davis suspected that if Chief Hogan felt there is a need for more patrol cars or officers dedicated to traffic enforcement that he would bring that forward.

Mayor Bellamy said that other issues discussed today are not in Council's Strategic Plan. Since making Asheville the safest City in America is one of Council's goals, she felt the appropriate time to address this issue would be in the following retreat follow-up discussion.

Closed Session

At 7:55 p.m., Councilman Mumpower moved to go into closed session for the following reasons: (1) To establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of contracts for the acquisition of real property on Swannanoa River Road by purchase, option, exchange or lease. The statutory authorization is contained in G.S. 143-318.11(a)(5); and (2) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: State of North Carolina; County of Buncombe; and City of Asheville. The statutory authorization is contained in G.S. 143-318.11(a)(3). This motion was seconded by Councilman Russell and carried unanimously.

At 8:25 p.m., Councilwoman Jones moved to come out of closed session. This motion was seconded by Councilman Russell and carried unanimously.

RETREAT FOLLOW-UP

Assistant to the City Manager Lauren Bradley said that the purpose of this discussion is a follow-up to the Council's retreat to receive additional Council direction on the 2008-09 Strategic Plan. Council held a retreat on February 4-5, 2008, facilitated by Andy Atkinson. Council then identified goals, objectives and potential action items for the coming year. Staff has compiled the retreat notes with remaining items from last year's plan. Staff proposes coming back to Council for formal adoption of the Strategic Plan via resolution after receiving direction.

Since Council agreed on five focus areas at the retreat, goals and objectives have been grouped in those areas. The "priority areas" from the 2007-08 Plan were community building; critical services and infrastructure; economic development; growth, development and land use; housing opportunities; natural and built environment; sense of place, heritage and the arts; and intergovernmental relations. The "focus areas" identified at the retreat is that Asheville will be a city that is affordable (The City of Asheville will offer a standard of living that is affordable and attainable for people of all income levels, life stages and abilities), green (Asheville will be the southeastern leader in clean energy and environmental sustainability while preserving and enhancing the city's natural beauty), safe (Asheville will be one of the safest and most secure communities when compared to similar cities), sustainable (Asheville will support a sustainable community and a sustainable city government through a strong commitment to infrastructure maintenance, capital improvements, long-term planning and fiscal responsibility), and commitment to partnerships (Asheville will collaborate with state and local governments, agencies and citizens to achieve regional goals). One additional area for City Council consideration is culturally vibrant (The City of Asheville embraces the community's vibrancy, character, diversity, and cultural heritage)."

Some goals and objectives from the 2007-08 plan have either been eliminated or modified to show that they have been accomplished or have evolved over time. For example, in 2008-09 the goal was to establish ambitious energy conservation goals for the City of Asheville - in 2008-09, the goal was modified to support efforts to reduce the city's carbon emissions by no

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less than 2% per year. Another example is that in 2008-09, the goal was to open public restrooms downtown - in 2008-09, that goal was accomplished.

In the Asheville City Council's Goals and Visions for 2008-09, she explained that the goals and objectives identified at the retreat have been added, for example: support efforts to hold the line on taxes and find areas for tax and fee relief; reduce energy consumption in privately owned buildings; and develop a long-term plan to address the city's aging infrastructure including facilities and sidewalks. In addition, columns distinguishing between short-term and long-term goals have been eliminated. The goals and objectives were combined into one category at the retreat without distinguishing between short- and long-term timeframes.

Regarding action items, a blank column has been included for potential action items that City Council may wish to add to the 2008-09 Strategic Plan. Action items recorded at the retreat have been grouped according to Council's "Focus Areas" and are listed below the main table.

Direction needed by Council includes (1) Does Council support replacing the "Priority Areas" with the focus areas identified at the retreat; (2) Is the current list of combined goals and objectives acceptable; (3) Are there potential action items Council wants to add to the Plan for 2008-09; and (4) Does Council support scheduling adoption of the resolution affirming the 2008-09 Strategic Plan?

After a brief discussion, it was the consensus of Council to support replacing the "Priority Areas" with the only four focus areas identified at the retreat (affordable, green, safe and sustainable), and not to include the "Culturally Vibrant" focus area or the "Committed to Partnerships" focus area, condensing some bullets and moving them into the other four areas. In addition, the following three action items in the "Culturally Vibrant" focus area would be discussed in a worksession: (1) increase the holiday lighting program; (2) reinstate fireworks on New Year's Eve; and (3) reinstate the Light up Your Holiday Event.

Mayor Bellamy challenged staff to provide Council with the objective criteria used to measure a safe city.

As Mayor Bellamy read out each new goal, objective and action item identified at the retreat, Council members voiced their opinions on word-smithing, redundancy, deletion, addition and general clarification on the item.

After considerable discussion, Mayor Bellamy said that these strategic priorities will be voted on by Council and then as we proceed into the budget process, staff will create their budgets in line with Council's overall priorities. After the budget is approved, staff will then begin working on those priorities.

ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 9:21p.m.

Tesha Lipe
CITY CLERK

MAYOR

Tuesday – March 25, 2008 - 5:00 p.m.

Regular Meeting

Present: Vice-Mayor Jan B. Davis, Presiding; Councilwoman Robin L. Cape; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower (left meeting at 6:13 p.m. due to illness); Councilman Brownie W. Newman; Councilman William A. Russell Jr.; Assistant City Manager Jeffrey B. Richardson; City Attorney Robert W. Oast Jr.; and City Clerk Keisha Lipe

Absent: Mayor Terry M. Bellamy

PLEDGE OF ALLEGIANCE

Vice-Mayor Davis led City Council in the Pledge of Allegiance.

INVOCATION

Vice-Mayor Davis gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING APRIL 2008 AS "THE GREAT ASHEVILLE-BUNCOMBE CLEAN UP MONTH"

Councilman Newman read the proclamation proclaiming April 2008, as "The Great Asheville-Buncombe Clean Up Month." He presented the proclamation to Susan Roderick, Executive Director of Quality Forward, who briefed City Council on some activities taking place during the month.

II. CONSENT AGENDA:

At the request of Councilman Mumpower, Consent Agenda Items "B," "C," "G," "I," "L" and "M" were removed from the Consent Agenda for discussion and/or individual votes.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MARCH 11, 2008, AND THE WORKSESSION HELD ON MARCH 18, 2008

B. RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A GRANT FROM THE N.C. COALITION TO END HOMELESSNESS

This item was removed from the Consent Agenda for discussion and/or an individual vote.

C. BUDGET AMENDMENT TO ACCEPT A GRANT FROM THE N.C. COALITION TO END HOMELESSNESS

This item was removed from the Consent Agenda for discussion and/or an individual vote.

D. RESOLUTION NO. 08-55 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A UTILITY AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR THE UPGRADE OF AN 18-INCH WATERLINE TO A 24-INCH WATERLINE ON SAND HILL ROAD

Summary: The consideration of a resolution authorizing the Mayor to enter into a Utility Agreement with the N.C. Dept. of Transportation (NCDOT) for the upgrade of a 18 inch water line to a 24 inch water line on Sand Hill Road

The NCDOT is widening NC 112 Sand Hill Road from west of Lake Drive (SR 3437) to Sardis Road. This road project known as SA-181 includes replacing the current 18 inch cast iron water line along Sand Hill Road with a new 24 inch ductile iron line.

The current water line on this section of Sand Hill Road is over 80 years old and is a major transmission line for industrial, commercial and residential customers in the Enka-Candler area including the Brevard Road area.

This project will enhance customer service by eliminating costly line breaks which cause water outages to area customers on the current line. This old cast iron line would probably not withstand major road construction without multiple water line breaks which could affect the daily operations of major industrial employers in this area as well as residential, education and commercial customers. NCDOT estimated cost is $2,252,398.00. This is only an estimate from NCDOT and the actual cost could be lower or higher. This is a local NCDOT project and was not on the State NCDOT project lists for capital improvement funding so funding has not been set aside for this project.
Funds for this project will be allocated through FY 2008/2009 water capital funding.

Pro: This project will eliminate a problematic 80 year old 18 inch water line which will enhance customer service and water service reliability to major industrial, education, commercial and residential customers.

Con: Funding for this project was not programmed due to this being a local NCDOT project and was not on long term project lists for future funding. Funds will have to be allocated in FY 2008/09 capital funding.

Staff recommends City Council approve resolution authorizing the Mayor to enter into a Utility Agreement with the NCDOT for the upgrade of an 18 inch water line to a 24 inch water line on Sand Hill Road

RESOLUTION BOOK NO. 31 - PAGE 112

E. RESOLUTION NO. 08-56 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AMENDMENT AGREEMENT WITH THE CORP OF ENGINEERS TO PROVIDE PROFESSIONAL SERVICES IN PREPARING FEASIBILITY ANALYSIS FOR FLOOD DAMAGE REDUCTION

Summary: The consideration of a resolution authorizing the City Manager to execute an amendment agreement with the Corp of Engineers to provide professional services in preparing feasibility analysis for flood damage reduction.

The current contract with the Corp of Engineers is in the amount of $49,500. Staff is requesting an increase in the contract in the amount of $16,000. The total contract amount after the amendment is $65,500. The Corp of Engineers is providing a 50%-50% match. The project budget is $131,000.

In September 2007, the City of Asheville signed a contract with the Corp of Engineers to prepare a Flood Action Plan for Biltmore Village. The Corp has completed a majority of this work in conjunction with the City and the Biltmore Village business and property owners. The Corp of Engineers has obtained additional funding in the amount of $16,000 to assist the City. We would like to continue our relationship with the Corp.

Specifically, the Corp will assist the City in developing scopes of services, reviewing proposals and providing quality control for feasibility analysis for various ways to reduce flood damage reduction on the Swannanoa River Watershed Basin. The types of feasibility analysis that we will be completing will include the following:

- Evaluating possible locations for temporary retention during flooding events;
- Evaluating the impact of potential relocations of utilities from the floodplain;
- Identifying bridges or overpasses that have significant impact on flooding; and,
- Identifying additional properties that should be bought out to reducing flood damage.

Our match of $16,000 is available in the current budget. This money is part of a grant provided by the State in the Senate Bill 7 funds appropriated after Hurricane Francis and Ivan.

We are hopeful that the Corp of Engineers will find additional funding beyond the $16,000 to assist us in these efforts.

Pros:

- The Corp of Engineers is funding 50% of this work.
- The Corp of Engineers has valuable technical resources to assist the City.
- Compliance with the Corps procedures will allow us to apply for construction money from them in the future.

Con:

- The private sector could perform this work. Entering into this agreement could be considered as taking work away from the private sector. We would loose the 50% match if we were to do this.

Staff recommends City Council approve a resolution authorizing the City Manager to execute an amendment agreement with the Corp of Engineers to provide professional services in preparing feasibility analysis for flood damage reduction.

RESOLUTION BOOK NO. 31 - PAGE 113

F. **RESOLUTION NO. 08-57 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AMENDMENT AGREEMENT WITH BROWN AND CALDWELL TO PROVIDE PROFESSIONAL SERVICES IN THE FACILITATION AND ANALYSIS OF THE STORMWATER AND EROSION CONTROL ORDINANCE**

Summary: The consideration of a resolution authorizing the City Manager to execute an amendment agreement with Brown and Caldwell to provide professional services in the facilitation and analysis of the Stormwater and Erosion Control Ordinance.

In August 2007, City Council adopted revisions to the Stormwater and Erosion Control Ordinance. Council directed staff to solicit additional input from the public, the Watershed Policy Committee and the Planning and Zoning Commission. Since October 2007, the Watershed Policy Committee was been meeting every two weeks for four hours to review and make recommendation to the ordinance. In addition to meeting, they have held two public meetings.

Marshall Taylor with Brown and Caldwell has facilitated the meeting, prepared agendas, provided research and compiled committee recommendations. We had anticipated this process would take three months. The Committee did not feel that three months was adequate time to

hold meetings, collect data and make solid recommendations to the Planning and Zoning Commission.

The Committee hopes to have their recommendations to the Planning and Zoning Commission in mid-May and before City Council in July 2008.

Funds for this amendment are available in the current budget.

Pros:

- Extending this contract will insure that the Watershed Policy Committee will have a technical facilitator for the remained of the process.
- It has been helpful to have these meetings facilitated by someone other than City staff. Marshall Taylor with Brown and Caldwell is an expert on the subject matter and an excellent facilitator.
- The Watershed Policy Committee has made great progress in getting additional public input as well as consensus on some of the "hot" issues on the ordinance.

Con:

- The stakeholder process has taken longer than anticipated thus costing more in support and facilitation than anticipated.

Staff recommends City Council approve a resolution authorizing the City Manager to execute an amendment agreement with Brown and Caldwell to provide professional services in the facilitation and analysis of the Stormwater and Erosion Control Ordinance.

RESOLUTION BOOK NO. 31 - PAGE 114

G. ORDINANCE TO ENACT OR CHANGE SPEED LIMITS ON CHUNNS COVE ROAD AND CHUNNS VIEW DRIVE

This item was removed from the Consent Agenda for discussion and/or an individual vote.

H. RESOLUTION NO. 08-58 - RESOLUTION AUTHORIZING THE MAYOR TO ACCEPT DONATION AND CONVEYANCE OF REAL PROPERTY OFF LOUISIANA AVENUE FROM THE CONSERVATION TRUST FOR NORTH CAROLINA

Summary: The consideration of a resolution authorizing the Mayor to accept donation and conveyance of real property off Louisiana Avenue from the Conservation Trust for North Carolina.

The City of Asheville is interested in establishing and maintaining parks and greenway systems throughout the corporate limits of the City of Asheville. The Conservation Trust for North Carolina (CTNC) has offered to donate real property located off Louisiana Avenue (PIN 9638.09-17-2346) known as the Falconhurst Natural Area. The property is a 7.9 acre tract of land immediately west of and adjoining an 8 acre tract owned by the City that is currently leased to the United States for an Army Reserve Center. The land is mostly rolling hillsides and is heavily wooded. It is a landlocked parcel bounded to the north by Smith Mill Creek and encumbered by a Metropolitan Sewerage District easement running along the creek bank. It has been a natural area for a number of years.

It is the intent of CTNC to convey the property subject to deed restrictions to protect the site from development and maintain its integrity as a nature preserve, while still permitting appropriate public recreational use. To summarize, the deed restrictions will allow for minimal

park improvements, such as unpaved hiking trails, pedestrian foot bridges across the creek and observation/viewing platforms, subject to the written approval from CTNC. The deed restrictions prohibit the use of fertilizers, pesticides, and non-native landscaping, and also seek to protect the water quality and drainage systems on the property. Please contact staff to review the complete conservation restrictions.

The CTNC incurs substantial costs monitoring its protected properties to ensure compliance with the deed restrictions and must set aside funds in a dedicated endowment to cover the costs. Therefore a one time contribution of $6,000 is required to cover the cost of monitoring the deed restrictions. The funding for this type of property acquisition cost is already included in the current year's budget and will be utilized accordingly. Although the property is currently non-taxable, the listed tax value is $102,100.

A Phase I Environmental Site Assessment has been completed by Patrick Price and a description of the property is contained in the deed at Deed Book 790, Page 350. The Parks and Recreation staff have reviewed the proposed donation along with the proposed deed restrictions and found that the property is appropriate for acceptance.

The proposed donation has been reviewed by the Recreation Board at its regular monthly meeting on March 10, and the Greenway Commission at its regular monthly meeting on March 13, and both concur with staff's recommendation.

City staff recommends City Council approve a resolution authorizing the Mayor to accept donation and conveyance of real property off Louisiana Avenue from the Conservation Trust for North Carolina, for the City of Asheville to preserve as a natural area.

RESOLUTION BOOK NO. 31 - PAGE 115

I. **RESOLUTION APPROVING A FOUR YEAR LEASE WITH THE ASHEVILLE BOARD OF ALCOHOLIC CONTROL FOR PROPERTY LOCATED AT 167 BILTMORE AVENUE**

This item was removed from the Consent Agenda for discussion and/or an individual vote.

J. **ORDINANCE NO. 3597 - BUDGET AMENDMENT TO APPROPRIATE REVENUE AND BUDGET EXPENDITURE ACCOUNTS ASSOCIATED WITH BILTMORE FARMS FUNDING FOR THE REMOVAL OF EXISTING STREET LIGHTS FOR THE BILTMORE PARK PHASE I DEVELOPMENT**

Summary: The consideration of a budget ordinance amendment in the amount of $11,949.00 to appropriate revenue and budget expenditure accounts associated with the removal of existing streetlights for the Biltmore Park Phase I development.

Biltmore Farms has requested the City to authorize Progress Energy to remove existing street lights on their Biltmore Park Phase I project to enable installation of new streetlights conducive to their development plans. Authorization to Progress Energy by the City is necessary because the accounts are in the City's name.

Street lights are installed by Progress Energy and monthly charges are incurred for a specific term. Since the existing streetlights are being removed prior to the term end, penalties are applicable. The calculation provided by Progress Energy for the removal of eight (8) street lights is estimated at $11,949.00.

Biltmore Farms will provide the necessary funds prior to authorization for removal by the City to Progress Energy, to cover all costs.

Pros:

- Removal of the existing street lights will allow the new street lights to blend with the new development.
- No cost to the City.

Con:

- None identified.

City staff recommends City Council approve a budget amendment to appropriate revenue and budget expenditures associated with the removal of existing street lights for the Biltmore Park Phase 1 project.

ORDINANCE BOOK NO. 24 - PAGE 379

K. RESOLUTION NO. 08-60 - RESOLUTION MODIFYING THE ASHEVILLE CITY COUNCIL MEETING SCHEDULE

RESOLUTION NO. 08-71 - RESOLUTION AMENDING CITY COUNCIL'S RULES AND PROCEDURES

Summary: The consideration of resolutions implementing changes to Council's meeting schedule and rules, as discussed at the March 18, 2008, worksession.

A. Worksession meeting time. At the March 18 worksession, Council indicated that it wished to change the schedule for worksessions so that the meetings would begin at 3:00 p.m. This is a return to the schedule that was in place prior to 2006, except that the meeting on the first Tuesday, which used to be a worksession, is not being held, in lieu of the Council committee structure.

B. Worksession processing, agenda submittal deadline. Council also indicated that it wished to clarify the rules regarding taking action and receiving public comment at worksessions (essentially, codifying the practices that have developed over time), and to modify the submittal deadline for agenda items.

The resolution amends Rule 1 to defer to the resolution that Council adopts at least annually regarding its meeting schedule, and to address the issues regarding action and comment that Council discussed. This resolution also revises the agenda material submittal deadlines in Rule 4, not only as to when the deadline is, but also to recognize the effect of the worksessions on Council's schedule. This amendment also provides for modification of these deadlines in appropriate circumstances.

Pros:

- Implements Council's direction as to schedule changes
- Provides clarification as to purposes and procedures for worksessions
- Adjusts submittal deadlines to recognize re-institution of worksessions
- Eliminates potentially confusing redundancy between rules and resolution regarding meeting schedule.

Cons:

- None noted

If the resolutions meet with Council's intent, adoption is recommended.

RESOLUTION NO. 08-60 - RESOLUTION BOOK NO. 31 - PAGE 117

RESOLUTION NO 08-71 - RESOLUTION BOOK NO. 31 - PAGE 132

L. RESOLUTION AUTHORIZING THE ASHEVILLE CITY COUNCIL TO SUPPORT THE COUNTDOWN TO ZERO INITIATIVE TO END THE EUTHANIZING OF HEALTHY ANIMALS BY 2012

This item was removed from the Consent Agenda for discussion and/or an individual vote.

M. RESOLUTION ADOPTING THE CITY COUNCILS 2008 GOALS

This item was removed from the Consent Agenda for discussion and/or an individual vote.

Vice-Mayor Davis said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilwoman Cape moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Jones and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

B. RESOLUTION NO. 08-54 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A GRANT FROM THE N.C. COALITION TO END HOMELESSNESS

Summary: The consideration of (1) a resolution authorizing the City Manager to accept a grant in the amount of $10,000 from the North Carolina Coalition to End Homelessness (NCCEH); and (2) a budget amendment in the amount of $10,000.

Asheville-Buncombe has exhibited best practices in 10-Year Plan Implementation since the project was implemented in 2006 under the name of the Homeless Initiative. This grant from the NCCEH will allow the Homeless Initiative to continue to move forward in three areas:

Enhancing the Advisory Group's and advocates' knowledge and experience: Representatives from Asheville-Buncombe will attend the North Carolina Homelessness Leadership Summit and participate in site visits to other programs.

Collecting research based information about the community needs and costs in Asheville-Buncombe. Through a contract with a research scientist, existing information on costs and needs for services will be collected from a variety of agencies to better inform decision-making in implementing the 10-yesr Plan.

Enhance community involvement and commitment to the 10-Year Plan process. The grant will pay for professional input into the Homeless Initiative's public relations plan, including a new logo, website, newsletter, and other publications.

This grant requires no local match. All funds must be spent by June 30, 2008.

Pros:

- Increase the knowledge and effectiveness of the Homeless Initiative's Advisory Board.
- Provide better data on costs and needs in serving the homeless population
- Improve dissemination of information to the larger Asheville-Buncombe community.

Con: None.

Staff recommends City Council approve (1) a resolution authorizing the City Manager to accept a grant in the amount of $10,000 from the North Carolina Coalition to End Homelessness (NCCEH); and (2) a budget amendment in the amount of $10,000.

Ms. Amy Sawyer responded to questions from Council, some being, but are not limited to: how many people have we provided housing to; is the grant limited to this outreach component or are there other ways the money can be utilized; and how do these particular interests benefit the Plan.

Councilman Mumpower felt that this is a misinvestment of tax dollars and a distraction for more meaningful initiatives that will help the homeless. He said that until the State fixes our court system which is directly accountable for the significant number of people who are experiencing homelessness, he is not willing to accept funds for nice things.

Councilman Newman felt that this grant will help with the clogged court system since we are working directly with the people who burden the Police Department resources and medical services.

Councilman Mumpower asked our Police Department to provide feedback, making allowances for the winter season, on how much this has solved their dilemma in terms of dealing with predatory homeless people and others who abuse downtown residents and tourists.

Councilman Newman moved for the adoption of Resolution No. 08-54. This motion was seconded by Councilwoman Jones and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 31 - PAGE 111

C. ORDINANCE NO. 3595 - BUDGET AMENDMENT TO ACCEPT A GRANT FROM THE N.C. COALITION TO END HOMELESSNESS

Summary: See Consent Agenda Item "B" above.

Councilwoman Cape moved for the adoption of Ordinance No. 3595. This motion was seconded by Councilwoman Jones and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 24 - PAGE 376

G. ORDINANCE NO. 3596 - ORDINANCE TO ENACT OR CHANGE SPEED LIMITS ON CHUNNS COVE ROAD AND CHUNNS VIEW DRIVE

Summary: The consideration of an ordinance to enact or change speed limits on Chunns Cove Road and Chunns View Drive.

Chunns Cove Road and Chunns View Drive have been identified for speed concerns by residents, City boards and commissions, City Council, the Asheville Police Department, Transportation Services Division staff, and/or other City staff. The Transportation Services Division staff has conducted field reviews along these streets to assess existing conditions including street geometry and conditions and/or speed studies. The Asheville Police Department supports the recommendations.

<u>20 Miles Per Hour</u>

Chunns View Drive is a narrow residential street with street geometry problems, including frequent crests and curves, numerous access points, and heavily used on-street parking. This

street warrants a lower speed limit than the typical 25 mph. The recommended safe operating speed on this street is 20 mph:

1. Chunns View Drive, from Mountainbrook Road to its dead-end.

30 Miles Per Hour

Chunns Cove Road is primarily a residential-type street that exhibits characteristics of a collector-type street. It is a winding street with limited sight distance in a number of locations and residential frontage with numerous access points in many areas. It has frequent roadside hazards *(i.e. utility poles)* within the desired "clear zone", which is the space between the pavement edge and the hazards, necessary for 35 mph. The recommended safe operating speed on this street is 30 mph:

1. Chunns Cove Road, from Piney Mountain Drive to the city limits *(a point 0.84 mile north of Piney Mountain Drive)*.

Staff recommends City Council approve an ordinance to enact or change speed limits on Chunns Cove Road and Chunns View Drive.

Councilman Mumpower felt the City is artificially lowering the speed limit, thus creating illusions of safety when we are very limited in enforcing our speed laws in the City.

Councilman Newman moved for the adoption of Ordinance No. 3596. This motion was seconded by Councilwoman Jones and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 24 - PAGE 378

I. RESOLUTION NO. 08-59 - RESOLUTION APPROVING A FOUR YEAR LEASE WITH THE ASHEVILLE BOARD OF ALCOHOLIC CONTROL FOR PROPERTY LOCATED AT 167 BILTMORE AVENUE

Summary: The consideration of a resolution approving a four year lease with the Asheville Board of Alcoholic Control for property located at 167 Biltmore Avenue.

City Council authorized publication of a notice of intent to lease the space at 167 Biltmore Avenue to the City of Asheville Board of Alcoholic Control on February 26, 2008. A notice of intent was duly published in the Asheville Citizen-Times on February 29, 2008.

The property at 167 Biltmore Avenue is owned by the City of Asheville and is located on the corner of Biltmore Avenue and South Charlotte Street. In 1985, the City of Asheville leased this property to City of Asheville Board of Alcoholic Control for a retail outlet store and the Board of Alcoholic Control is currently occupying the space on a month-to-month basis. This proposed lease will enable the Board of Alcoholic Control to maintain the current use as a retail outlet store. There is a provision which allows either party to terminate the agreement upon 180 days notice. The term of the Lease will be for four years. The monthly rent will be $1,006.75 for the first lease year, starting March 2008, (reflecting a 20% increase over the previous rent) and increasing by 20% each year. The Board of Alcoholic Control will carry utilities, water, electricity and gas at its own expense.

Approval of this resolution will authorize the Mayor to execute a lease agreement with the City of Asheville Board of Alcoholic Control at 167 Biltmore Avenue.

Pros:

- The terms of the lease allow the existing South Charlotte Street ABC store to continue its current operation and perform the governmental function of the sale, control and regulation of alcoholic beverages and the distribution of its gross receipts according to North Carolina General Statutes.
- The rental income from this particular property benefits the Community Development Block Grant Program.

Con: There is no negative impact.

Economic Development and Community Development staff recommends City Council approve a resolution authorizing a lease with the City of Asheville Board of Alcoholic Control for the premises at 167 Biltmore Avenue.

Councilman Mumpower spoke against the action especially when you look at the actual value of the property.

In response to Councilman Mumpower, Real Estate Manager Nikki Gunter said that if the property was put up for sale, and if the property was developed to it's full potential, the fair market value per month would be $4,500.

Councilman Mumpower felt it is the pattern of the City to request fair market value for our properties and as this is a special exception, he could not support the action.

Councilwoman Cape explained this is only a 4-year lease and the City is entering into our downtown Master Planning process to determine the highest and best use of properties. She felt this is a good short-term relationship.

Councilman Newman moved for the adoption of Resolution No. 08-59. This motion was seconded by Councilwoman Jones and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 31 - PAGE 116

L. RESOLUTION NO. 08-61 - RESOLUTION AUTHORIZING THE ASHEVILLE CITY COUNCIL TO SUPPORT THE COUNTDOWN TO ZERO INITIATIVE TO END THE EUTHANIZING OF HEALTHY ANIMALS BY 2012

After thanking Councilwoman Jones for bringing this matter to Council's attention, Councilman Mumpower moved for the adoption of Resolution No. 08-61. This motion was seconded by Councilwoman Jones and carried unanimously.

RESOLUTION BOOK NO. 31 - PAGE 126

M. RESOLUTION NO. 08-62 - RESOLUTION ADOPTING THE CITY COUNCILS 2008 GOALS

After Council briefly commented on the strong goals set, Councilman Mumpower moved for the adoption of Resolution No. 08-62. This motion was seconded by Councilwoman Jones and carried unanimously.

RESOLUTION BOOK NO. 31 - PAGE 121

III. PRESENTATIONS & REPORTS:

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER REZONING PROPERTY LOCATED AT 10 ENGLISH HOLLY COURT, 209 AND 215 OAK TERRACE AND 10 OLD SARDIS ROAD FROM RS-4 RESIDENTIAL SINGLE FAMILY MEDIUM DENSITY DISTRICT TO COMMUNITY BUSINESS I DISTRICT

ORDINANCE NO. 3598 - ORDINANCE TO REZONE PROPERTY LOCATED AT 10 ENGLISH HOLLY COURT, 209 AND 215 OAK TERRACE AND 10 OLD SARDIS ROAD FROM RS-4 RESIDENTIAL SINGLE FAMILY MEDIUM DENSITY DISTRICT TO COMMUNITY BUSINESS I DISTRICT

Vice-Mayor Davis opened the public hearing at 5:39 p.m.

Urban Planner Blake Esselstyn said that this is the consideration of an ordinance to rezone property located at 10 English Holly Court, 209 and 215 Oak Terrace and 10 Old Sardis Road from RS-4 Residential Single Family Medium Density District to Community Business I District. This public hearing was advertised on March 14 and 21, 2008.

Mr. Esselstyn said that the applicants are requesting a rezoning of four parcels and adjacent right-of-way areas from RS-4 to CBI. Two parcels currently support residential use with detached single-family homes and/or manufactured homes. One parcel currently has a multi-tenant commercial development, a grandfathered non-conforming use in the residential district. The fourth parcel has been graded and graveled for parking, though this use is not permitted under RS-4 zoning. The proposed rezoning would bring the non-conforming uses into conformity, and establish an additional 2.2 acres of land zoned for commercial use.

While the area is adjacent on two sides to CBII zoning, CBI zoning was requested as it is more restrictive than CBII and could provide a transition between the CBII zoning and nearby residential areas. All of the properties front on either Oak Terrace Road or Old Sardis Road Circle; an unopened right of way divides the area and provides potential for additional access. The paved surface of Oak Terrace Road and Old Sardis Road Circle is narrower than a typical road providing access to CBI properties, although examples of similar roads serving CBI properties do exist.

Two of the subject properties lie across Oak Terrace Road from properties used as part of the Stone Ridge Tavern restaurant business. The development of this lunch and dinner destination was approved under vested rights, as development plans were initially submitted to the County before this property came into the extraterritorial jurisdiction (ETJ) in summer of 2001. (Buncombe County had not implemented zoning in this area at that time.) Mr. Barlas, the owner of the restaurant as well as the two facing properties, acquired the subject property with PIN LOT 6725 in late 2004 to provide additional space for employees to park. In spring 2005, the first notice of violation was issued specifying the prohibition of parking lots in RS-4.

The restaurant has 224 seats, plus seating for 20 on a patio in favorable weather. Mr. Barlas, the owner, says that at peak times, there are 43-46 employees on the site (wait staff, bar staff, management, bussers, host(esse)s, and kitchen staff). Under the City of Asheville's ordinance, the minimum number of parking spaces would be 97, when figured conservatively, or 105 when including the patio seats and 46 staff. (One space is required for every three seats, plus one space per two employees on shift of greatest employment.) The restaurant's commercial area currently offers 87 full parking spaces, as well as seven that appear to be in use though they do not meet typical City dimensional requirements. Incidentally, the maximum number of parking spaces that would be permitted for such a restaurant under the Unified Development Ordinance (UDO) would be 134 (145 if including patio and 46 employees). By way of comparison, Fuddruckers on Charlotte Street has 210 seats and about 129 parking spaces.

Planning staff suggested a conditional rezoning to allow the parking lot use to continue without being in violation. The applicants' decision to request straight rezoning reflects a

preference to leave multiple options open for development and not be restricted to a master plan. Additionally, the decision to include multiple parcels addresses a possible characterization of the request as spot zoning, as the map amendment would apply to a significant block of land, not just one parcel.

The RS-4 zoning currently in place for the subject properties was made effective on August 14, 2001, when the entire ETJ zoning in this area was approved. The intent of the RS-4 district is to establish "a medium density for single-family dwellings and to stabilize and protect the residential character of the district while promoting a suitable environment for single-family living. Non-single-family development normally required to provide the basic elements of a balanced and attractive residential area is also permitted".

The UDO states that the CBI District was "established to provide areas for medium-density business and service uses serving several residential neighborhoods. This community business center may serve as a workplace for many residents in the surrounding neighborhoods and should be sensitive to a significant pedestrian population, but also provide for adequate and safe vehicular access. The [...] district is designed to be located primarily along streets which serve multiple residential neighborhoods."

Ken Putnam, the City Traffic Engineer, reviewed the request and was not opposed to the streets being used to provide access for commercial uses in the event of a rezoning, but he pointed out that a large development might require improvements to one or more of the streets, possibly even an additional lane.

The proposed rezoning would allow standalone parking lots as a permitted use on these properties, and could alleviate some of the parking challenges experienced by the Stone Ridge Tavern. With a straight rezoning and no associated master plan, however, there is no *assurance* that the rezoning will result in creation of a compliant parking situation. Staff recognizes that there also could be other solutions to the parking insufficiencies which may not have been fully explored, such as shared parking with a nearby church, removal of a building in the current parking area, or reduction in the number of seats.

Given that three of the four parcels, comprising more than 2.3 acres, currently appear to support just four homes, it can be argued that land this close to dense commercial development could be put to a higher and better use, which the proposed rezoning would facilitate. Furthermore, any development of one of the parcels adjacent to residential zoning would require the installation of a 30-foot buffer to separate the dissimilar uses. While development under the CBI standards could be appropriate, however, a rezoning without conditions could also allow development which would not be in harmony with the adjacent residential areas and the character of the existing neighborhood.

This request came before the Planning and Zoning Commission at their February 6, 2008, meeting. There was no indication of neighborhood opposition at the meeting. Commissioners noted the absence of opposition as they voted to recommend approval, 5-1 (Mr. Byers voting no because he felt the application should be for conditional zoning).

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros

- Would bring two non-conforming uses into compliance.
- Highly compatible with zoning to north and east.
- Potential to provide mixed-use infill development.
- Right of way on west side of subject properties would augment the buffer on a portion of that side.

Cons

- Would result in a loss of residentially zoned land.
- Affected streets (in current condition) not well-suited to serve possible high-intensity development.
- Straight rezoning to CBI allows potential for added development incompatible with adjacent RS-4.

Enabling non-conforming situations to become conforming can often justify support for upzoning of property. In this case, one of the two non-conforming situations was established without permits, in violation of the ordinance. Had permission been sought before the use was put in place, staff might view aspects of the request differently. Staff can envision development under the proposed zoning district that would befit the site, but a rezoning with conditions would provide more confidence in a positive outcome.

Mr. Brian Gulden, attorney representing Mr. John Barlas, explained that once Mr. Barlas was made aware that the grading for the parking lot was in violation, he took steps to rope the area off and put up "no trespassing" signs until he could come into compliance with the UDO. After talking with adjoining neighbors who joined in this petition, it was decided to go for a straight rezoning to Community Business I to meet their needs.

Vice-Mayor Davis closed the public hearing at 5:54 p.m.

Mr. Esselstyn responded to Councilwoman Cape when she questioned why the property was initially zoned RS-4.

Vice-Mayor Davis said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3598. This motion was seconded by Councilwoman Cape and carried unanimously.

ORDINANCE BOOK NO. 24 - PAGE 581

B. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR THE PROJECT KNOWN AS MYRA PLACE LOCATED AT MYRA PLACE AND OLD HAYWOOD ROAD FOR 12 EXCEPTIONAL DEVELOPMENT UNITS WITH 20% OF TOTAL UNITS BEING AFFORDABLE AND A REQUEST FOR A MODIFICATION ON REAR SETBACKS

ORDINANCE NO. 3599- ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR THE PROJECT KNOWN AS MYRA PLACE LOCATED AT MYRA PLACE AND OLD HAYWOOD ROAD FOR 12 EXCEPTIONAL DEVELOPMENT UNITS WITH 20% OF TOTAL UNITS BEING AFFORDABLE

City Clerk Lipe administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

City Attorney Oast said that the Authorized Practice Committee of the North Carolina State Bar has issued an advisory opinion that appearing in a representative capacity for a party before a local governmental body in a quasi-judicial proceeding is the practice of law, especially with respect to such aspects of the hearing as examining or cross-examining witnesses, or

advocating for legal conclusions or results. This does not prevent persons, including land use professionals, from presenting information or expressing opinions within their knowledge or area of expertise.

After hearing no questions about the procedure, Vice-Mayor Davis opened the public hearing at 5:56 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Jessica Bernstein submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Bernstein said that this is the consideration of the issuance of a conditional use permit for the project known as Myra Place located at Myra Place and Old Haywood Road for 12 exceptional development units with 20% of total units being affordable; and a request for a modification on rear setbacks.

Ms. Bernstein said that this is a request to review conceptual site plans for a conditional use permit (with 150% density bonus and incorporating 20% affordable housing) due to exceptional development standards pursuant to Section 7-16-2(b)(17) of the Unified Development Ordinance (UDO) to construct a 12-unit multi-family residential development.

The project site consists of two parcels located at Myra Place, Old Haywood Road and East Starnes Cove Road (Attachment to City Exhibit 3 - Location Map). The project proposes a recombination which would result in a portion of the northern lot combining with the southern parcel, resulting in an overall project area of 1.892 acres (according to site plans) (Attachment to City Exhibit 3 - Aerial Map). The parcels are zoned RS-4 with HB zoning located immediately adjacent to the south.

The applicant is requesting to create 12 multi-family units housed in four structures. With the proposed recombination, the underlying zoning allows for a total of 8 units; however, the applicant intends to use exceptional development and affordable housing to obtain 150% greater density than the base zoning allows, which results in 12 units total.

The four one-story structures (2 triplexes, 1 duplex and 1 quad) include a mix of 2 and 3-bedroom units. There are four 2-bedroom units with approximately 1,000 square feet and eight 3-bedroom units with 1,200 square feet. Each unit has 100 square feet of outdoor storage space included with a carport (Attachment to City Exhibit 3 - Site Plan).

Access to the project is proposed both from Myra Place to individual units (6 driveways) and from Old Haywood Road to a common parking area (1 driveway). The plan proposes one parking space for each unit in a carport (total: 12 spaces) and 12 visitor spaces (including one van accessible space) located at the southernmost end of the development for a total of 24 parking spaces. There is a 4-foot wide sidewalk/pathway proposed throughout the interior of the project, connecting the visitor parking area to the units through the common open space. The project incorporates a new 5-foot sidewalk along Old Haywood Road – but does not propose a sidewalk along Myra Place (none is required).

Landscaping is proposed according to the current ordinance, and includes a property line buffer (30' type B), street trees along Old Haywood Road and Myra Place, building impact

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landscaping and vehicular use area plantings. It does not appear that any existing vegetation is being preserved. A tree save area is required (30%) for this project, which is sufficiently covered by the amount of open space and the property line buffer. Fifteen percent (15%) of the project area is required to be set aside as open space, which is 12,362 square feet for this site. The applicant is proposing approximately 22,000 square feet of open space which more than exceeds the City's requirement.

Stormwater will be handled by a detention basin located within the designated open space that will be natural in appearance through grass on the surface with subterraneous rain tank storage and infiltration structures.

Incorporation of exceptional development practices allows for a project to seek alteration on standards for density, height, number of residential units per building, setbacks, lot size and lot with. For this project, the developer is providing higher quality building design and orientation sensitive to surrounding neighborhood context, significant use of green building techniques, enhanced landscaping through the use of additional/larger plants or bio-retention stormwater systems, pedestrian amenities (walking trail), enhanced stormwater management through the use of pervious parking areas and minimized access points by using shared driveways with adjoining parcels.

They are also proposing to designate 20% of the units as affordable. While 10 of the units will be sold at market rate value, 2 of the units are designated to be rented according to the City's Community Development department standards.

The applicant is seeking a 150% density bonus and requests a rear setback encroachment of approximately 5' to allow for the covered walkway/carport/storage area for 5 of the units along Myra Place.

At the February 18, 2008, Technical Review Committee (TRC) meeting, this project was approved with the conditions as listed in the staff report dated February 18, 2008. The Planning & Zoning Commission recommended approval at their March 5, 2008, meeting by a unanimous vote of 7-0. No communication from abutters has been received as of the writing of this report.

City Council must take formal action as set forth in section 7-5-5(e)(3) of the UDO, and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case pursuant to section 7-16-2(c) of the UDO. Staff's review indicates that all seven standards are met as proposed in the site plan.

1. That the proposed use or development of the land will not materially endanger the public health or safety.

   The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the *UDO*, the *Standards and Specifications Manual*, the *North Carolina Building Code* and other applicable laws and standards that protect the public health and safety.

2. That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.

   The proposed use and development of the land is compatible with the natural features and topography of the site. Although most of the existing vegetation will be removed, the landscaping proposed is fitting and compatible with the residential neighborhoods nearby.

The landscape buffer on the southern end of the site offers appropriate screening from the adjacent HB zone. There are no significant topographic features on the site.

3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.

   The development is not expected to injure the value of adjoining or abutting properties, especially given many of the exceptional development standards being incorporated into the design.

4. That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

   This area is zoned RS-4 which is intended for single-family development but does allow for development standard bonuses. The proposal for these modestly-sized, 1-story triplexes, duplex and quadraplex units are not incompatible with the scale, bulk, coverage and character of the area. The base zoning would allow 8 units. This request incorporates a density bonus for 4 additional units by incorporating Exceptional Development Standards and affordable housing. Staff does not believe that the 4 additional units create an incompatible situation as it relates to surrounding density or character.

5. That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.

   The *Asheville City Development Plan 2025* proposes a Smart Growth development pattern by encouraging compatible higher density residential infill projects and incentives for the construction of affordable housing. One way to accomplish this goal is to apply existing zoning tools to incentivize higher density residential infill development. This project utilizes the "Exceptional Development Standards" with altered site specifics and a 150% density bonus from incorporating 20% of the units as affordable.

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

   This proposed development is located near major road facilities, interstate connections and within approximately one mile to a City bus route (#1). In addition, basic infrastructure appears adequate and preliminary review by other service providers has not revealed any problems for future service to the development.

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

   The proposed project has been reviewed by the City's traffic engineer and is not expected to cause undue traffic congestion or create a traffic hazard.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros

- The project offers affordable housing units, aligning with City Council's goals.
- The proposed development will complement the existing residential fabric of the neighborhood.
- Higher density infill development furthers the goals and objective of the comprehensive plan.

Cons

- The project exceeds the density allowance and does not comply with rear setbacks along Myra Place (encroachment of carports) under the RS-4 zoning district unless the Conditional Use Permit and density bonus is approved.

Based on the above findings and that the project appears to comply as Exceptional Development with affordable housing, staff recommends approval of the conditional use permit and approval of the density bonus and development standard modification as requested by the applicant.

Mr. Art Carter, appearing in a representative capacity, spoke in support of the project.

After rebuttal, Vice-Mayor Davis closed the public hearing at 6:07 p.m.

Based on the above findings and the analysis provided in the staff report, Councilman Mumpower moved to adopt Ordinance No. 3599, to approve the conditional use permit adopting the proposed master plan for Myra Place with the requested modification rear setback along Myra Place and approving the 150% density bonus, subject to the following recommendations: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; (5) This project will undergo final review by the TRC prior to issuance of any required permits; (6) The Brae "Rain Tank" has not been approved for use as a stormwater detention system in the City of Asheville. Approval must be obtained from the Director of Transportation and Engineering before it can be approved for use on this project; and (7) The applicant will work with the City's Community Development staff on coordinating the affordable rental units. This motion was seconded by Councilman Russell and carried unanimously.

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V. UNFINISHED BUSINESS:

VI. NEW BUSINESS:

At 6:13 p.m., and at the request of Councilman Mumpower, Councilman Newman moved to excuse Councilman Mumpower due to illness. This motion was seconded by Councilman Russell and carried unanimously.

A. RESOLUTION NO. 08-63 - RESOLUTION TO SUPPORT MAKING ASHEVILLE A WI-FI CITY

Mr. Wally Bowen, representing Mountain Area Information Network (MAIN), explained that MAIN has been a non-profit service provider in Asheville and 14 counties in the mountain region since 1996. He described an expansion of their existing wireless high speed internet network city-wide, with the vision of making Asheville a "WI-FI City." He mentioned several state and national endorsements being (1) e-NC Authority; (2) New America Foundation; and (3) Institute for New Generation Internet San Francisco State University.

He said their request is for an official endorsement of the "WI-FI City" vision by the Asheville City Council, with no request for City money and with no City obligation to use the network.

He said they need an official endorsement (1) to add credibility with national foundation and corporate funders; (2) to leverage non-local funding for community and economic development; and (3) to create "buzz" among high-tech firms seeking big-city amenities for their employees.

"Wi Fi City" benefits include (1) security, mobility and reliability - (a) home-health delivery; (b) on-location film production; (c) construction sites; (d) tailgate markets; (e) the "Virtual Office;" (f) "Rolling Wi-Fi" on City buses; (g) small business friendly; and (h) green economy support; (2) digital divide, education and job training - (a) affordability and keeps dollars local; (b) focus on underserved neighborhoods; (c) at-risk youth ($100 laptop); (d) after school programs; (e) community center access; and (f) media production and youth mentoring; and (3) municipal applications - (a) public safety/disaster recovery - 75%; (b) building inspections - 52%; (c) public access - 50%; (d) public works - 45%; (e) AMR/utilities management - 43%; (f) education - 39%; (g) asset tracking - 34%; (h) SCADA - 35%; and (i) parking/traffic - 23%.

Currently operating meraki "Mesh" neighborhoods include: Ivy Street/UNC-A; Max Street/S. Charlotte Street; Lenior Street/Kenilworth; Haywood Road/Westwood; Haywood Road/Sand Hill Road; Biltmore Avenue/Charlotte Street; Joyner Avenue/Riverview; Montford; and Mount Clare.

Legislative priorities include (1) U.S.: Wireless Innovation Act of 2008; and (2) N.C.: E-NC Internet Connectivity/PEG Channels (SB-1068).

City Attorney Oast said that Mr. Bowen has prepared the following resolution for Council's consideration, which if Council wishes to endorse, he will revise accordingly: "WHEREAS, affordable and secure broadband Internet access is a 21st Century necessity for citizens, students, businesses, health care providers, non-profits and government agencies in the City of Asheville; and WHEREAS, a Digital Divide exists that prevents some households and businesses in the City of Asheville from having access to affordable broadband Internet service; and WHEREAS, the non-profit Mountain Area Information Network (MAIN) has proposed making Asheville a Wi-Fi City in order to bridge the broadband Digital Divide; and WHEREAS, this Wi-Fi City proposal has been endorsed by the State of North Carolina, e-NC Authority, the Institute for Next Generation Internet, and the Wireless Future Program of the New America Foundation; and WHEREAS, making Asheville a Wi-Fi City will expand job training and small business development opportunities for our youth and for local entrepreneurs; and WHEREAS, this Wi-Fi city proposal will enhance the City of Asheville's reputation as an emerging leader in bridging the broadband Digital Divide. Now therefore, the Asheville City Council endorses MAIN's efforts to attract investment from foundations and corporate funding sources to make Asheville a Wi-Fi City."

Councilwoman Cape moved to adopt a resolution supporting MAIN's efforts in making Asheville a "Wi-Fi City." This motion was seconded by Councilman Russell.

The following individuals spoke in support of MAIN's efforts:

Ms. Lois Clement, Director of Instructional Technology for the Asheville City Schools
Mr. Terry O'Keefe, technology consultant
A resident in Biltmore Park

Councilwoman Cape recognized Mr. Bowen for working to bring back media into the hands of ordinary people.

Mr. Bowen responded to questions raised by City Attorney Oast in order for him to prepare an appropriate resolution for Council consideration.

Throughout discussion, Mr Bowen responded to various questions/comments from Council, some being, but are not limited to: when other cities are getting out of the wi-fi business, why should Asheville be getting into it; what is the current fee structure and is the proposed fee structure; and what types of subsidies or foundation grants will be sought.

Vice-Mayor Davis wished MAIN great success, but was somewhat concerned that if they are not successful, is the City at risk for losing an opportunity to work with other providers. In addition, with his support for this action, he didn't want to imply that he was supportive of this effort being the City's wi-fi service and that the City will subsidize it.

The motion made by Councilwoman Cape and seconded by Councilman Russell carried unanimously. Resolution Book 31 - page 124

At 6:50 p.m., Vice-Mayor Davis announced a 20-minute recess.

B. SWANNANOA INCORPORATION DISCUSSION

City Attorney Oast briefly reviewed some information in Interim Planning & Development Director Shannon Tuch's staff report as follows: "In North Carolina, cities, towns and villages are incorporated municipalities. An incorporated municipality means the North Carolina General Assembly has granted a charter authorizing the establishment of a municipal corporation (government) and outlining the powers, authority and responsibilities of the municipal government. The City of Asheville has recently been approached by the bordering township of Swannanoa seeking a resolution of support for the incorporation of the Town of Swannanoa.

Under the North Carolina Constitution, municipal incorporation requires an act of the state legislature. Citizens in unincorporated areas may petition the Joint Legislative Commission on Municipal Incorporation which undertakes a phased review to determine minimum qualifications. During this time period, the incorporating municipality must notify all other cities that are over 50,000 or more and within 5 miles and request support for the desired incorporation. In the case of Swannanoa, Asheville is a city that meets this proximity test. Without a resolution of support from Asheville, the Swannanoa request for incorporation will move from the Legislative Commission to the General Assembly with a negative recommendation."

Using several maps for reference, Urban Planner Blake Esselstyn reviewed the following information from Ms. Tuch's staff report to Council: "Citizens of the proposed area of incorporation for Swannanoa have submitted their petition and have met their basic Phase 1 requirements.

The basic proposal requests the incorporation of approximately 22.05 square miles containing about 10,520 residents. The subject area is bisected by Interstate 40 and is located east of Asheville. The area proposed for incorporation generally follows the boundary of the Swannanoa fire district with five noted exclusions.

According to the information supplied by the representatives for incorporation, the Town proposes the minimum tax rate (5 cents per $100 valuation). This is in addition to the fire district tax that is already assessed. Incorporation also requires enhanced public services in four out of eight service areas; the petition filed describes the four additional services to be:

- Fire protection through a contract with the rural fire districts that currently serve the area.
- Police protection through a contract with the Buncombe County Sheriff's Dept.
- Street lighting.
- Street maintenance through a contract with the N.C. Dept. of Transportation (NCDOT).

North Carolina municipalities are established to protect the citizens and provide residents of a particular area with urban services. With the exception of street lighting, the proposed list of services appears to be a continuation of existing County and rural fire district services. Also, the development patterns and land uses indicate a much more rural character with only a little over half the land area being used for active uses typically associated with urban/suburban areas. Similarly, the density at .7 persons per acre suggests a more rural development pattern compared to other cities and towns in the area (Asheville = 2.7 persons/acre; Black Mountain = 1.8 persons per acre). Lastly, current sewer and water service is concentrated in a much smaller area primarily north of I-40 where existing infrastructure appears to closely follow the more intensively developed areas typical of a town or city.

As proposed, the Town of Swannanoa would be approximately half the size of Asheville and the third largest municipality in the county per land area; however, they would be sixth in density (eight total).

The City of Asheville cannot grow its corporate boundary without first determining that the area(s) of interest meet an urban level of development. There are a great number of restrictions on what qualifies as "urban" and these areas must be analyzed and tested to ensure that they meet these criteria. While it may be unreasonable to expect that a newly incorporated town would follow the same strict standards that growing municipalities are required to meet, it may be appropriate to suggest a more moderate level of development before supporting incorporation. Setting minimum density standards, as an example, may also elicit a more thoughtful approach to boundary delineation that does not follow arbitrary boundaries that are traced out of convenience.

Recent interest in incorporations is a matter of concern across the state and warrants further investigation and study by the Legislature. More locally, interest in incorporation has been expressed by Swannanoa as well as Leicester, with new interest coming out of Fairview. The rash of incorporations suggests that this is a defensive act and may be a response, in part, to the recent Buncombe County zoning and potential annexation or incorporation from other municipalities. Asheville's more recent annexation efforts have been directed away from Swannanoa and have been primarily concentrated in the south and west; however, growth to the east does not present as many topographic or service delivery issues as growth to the north would. Nevertheless, the areas located within the township of Swannanoa present other challenges to Asheville's ability to annex and it is unlikely that the City of Asheville will exercise annexations options that would significantly encroach into the petition area.

While the issue of defensive incorporations appears to be a statewide concern that the Legislature may ultimately weigh in on, a more immediate and local need for study has arisen. Staff would recommend that the City of Asheville, along with other regional representatives, initiate a collaborative study of regional growth management that could establish a set of minimum qualifications for incorporation. Asheville could, in turn, delay any annexation efforts into areas that overlap areas of interest for incorporation. This would help support the Asheville City Council's new Strategic Operating Plan goal of committing to partnerships that would help achieve regional goals.

For the reasons noted above, staff does not recommend adoption of the resolution to incorporate the Town of Swannanoa as proposed (but could support a resolution for incorporation of a smaller area that would meet a set of minimum qualifications)."

Councilwoman Cape felt that the Task Force presented some good reasoning behind their movement and was supportive of it in many ways. However, she does have difficulty in the overlapping parts on Swannanoa's western boundary with parts that overlap the City's map of areas of consideration for annexation at the City's eastern boundary. She wanted to be supportive of this effort and hoped we could work together.

Mr. David Alexander, representing the Executive Board of the Swannanoa Incorporation Task Force, explained to Council how this issue began in 2006 up to current events. A community meeting was held which 450 people attended. Results from a survey showed that 62% identified the possibility of incorporation as the most important issue before them. A Task Force was then formed with seven different committees. A formal survey was launched in spring of 2007 which showed widespread support with more than 75% favoring incorporation. A petition drive gathered 1,548 signatures of registered voters residing inside the proposed boundary, which have been certified by the Buncombe County Board of Elections. This represents 25% of the registered voters and 60% more than the minimum state requirements. He asked the City of Asheville to support their application for incorporation as they have met or exceeded the benchmarks established by the General Assembly.

Mr. Geoffrey Bullock, member of the Executive Board of the Swannanoa Incorporation Task Force and member of the Maps and Boundaries Committee, shared with Council some of the rationale that was used in establishing the proposed Swannanoa boundaries. A number of widely varying scenarios were explored throughout this process. Their final boundaries do closely correlate with the existing Fire District; however, that is not what they used as a starting point. One of the criteria used was what is natural and logical for having a cohesive community. One of their goals was to preserve the history and the character of the area.

Because the Task Force's presentation extended beyond the 10-minute presentation allotted timeframe, Councilman Newman moved to permit the Task Force four additional minutes to finish their presentation. This motion was seconded by Councilwoman Cape and carried unanimously.

Mr. Bullock said that they recognize rapid growth in Swannanoa. The open areas in the proposed incorporation area are considered to be areas under development and will directly influence the quality of life for the residents of Swannanoa.

Ms. Jane Conley Hansel said the Task Force is trying very hard to be good neighbors and to provide for the opportunity of Swannanoa to create a vision to have a voice in the community. She encouraged Council to support their application.

In response to Councilman Russell, Mr. Alexander said that there is no deadline for submitting their application to the State.

Councilman Russell felt that the proposed Swannanoa boundaries do make sense. He felt the best way to find out about whether the residents want to incorporate is a referendum, noting that only the Joint Legislative Commission on Municipal Incorporation in Raleigh has the authority to permit incorporation or not - not the Asheville City Council. He wondered if Council wouldn't be better served by holding a public hearing on this matter when Mayor Bellamy and Councilman Mumpower are present.

Councilman Newman supported the incorporation of Swannanoa as a town and hoped that we can work together to get to a common ground on the boundaries on the western side of the proposed Swannanoa incorporation. Regarding the proposed boundaries, he was concerned about the area on the western end of the proposed Swannanoa boundaries. He felt that City Council owes it to Asheville residents to make sure the boundary is right. He sees that parts of the ridge lines and natural features guide the boundary decisions, but on the City's eastern edge, the boundary doesn't appear to follow property boundary lines. He hoped the City and the Task Force could sit down and discuss those concerns.

Councilwoman Cape agreed that Asheville wants to be good neighbors with Swannanoa and hoped they would be willing to meet and discuss the boundary lines on the City's eastern side. Since the Task Force has worked with Warren Wilson College to delete their property from

their proposed boundaries, she feels the Task Force would be agreeable to working with the City on their concerns.

Recognizing the Task Force doesn't have staff or a budget, Councilwoman Cape moved to direct staff to (1) work with the Task Force on the eastern boundary concern and report back to Council in an expeditious manner; and (as suggested by Councilwoman Jones) (2) discuss with the Task Force an annexation plan of who is going to grow in what direction. This motion was seconded by Councilman Newman.

In response to Councilman Russell, Mr. Alexander said that a 2 or 4 week delay will not materially affect their application process. However, he noted that any change in their boundaries will also change the dynamics of the petition, which will be submitted with their application. That would necessitate further action by the Buncombe County Board of Elections. Councilwoman Cape noted that since they have such a high percentage over the minimum state requirements, this may not pose a problem with the petition.

In response to Councilwoman Cape, City Attorney Oast briefly reviewed the role of the Buncombe County Board of Elections in terms of verifying a petition

In response to Councilman Newman, Mr. Bullock said that Swannanoa's Charter doesn't address annexation. Their position, as an Executive Board, is that they are not authorized to set policy. He felt that would be a future policy issue for the elected town council.

The following individuals spoke against the Swannanoa incorporation for various reasons, some being, but not limited to: many people who signed the incorporation petition were told that they were going to be annexed right away by Asheville, and have since requested their names be removed from that petition; they have instituted a petition drive for people who do not wish Swannanoa to incorporate and had 400 people sign their petition the first day; the Task Force is now supporting a referendum, but the state does not require that; concerns that a Planning & Zoning Committee and a Parks & Recreation Committee are not in their budget; people like the freedom of living in the County; additional extra taxes will hurt small businesses and individuals; Swannanoa residents already have a voice with the Buncombe County Commissioners; there is no plan for annexing Swannanoa for at least the next 10 years; request for a referendum; Swannanoa has over 10,000 people and the Task Force only surveyed 300 people, which 75% of the 300 people supported incorporation; not all large open areas are being developed and owners of those vacant lands should not have to pay more taxes for services they don't need; street maintenance concerns in the budget; and support for a small town of Swannanoa centered around Exit 59 off I-40, with opportunities to annex as areas grow around it:

Mr. Eric Gorny, Swannanoa resident
Swannanoa resident and business owner
Ms. Nancy Dugan, area resident and owner of large open area (requested her property be excluded from the Swannanoa incorporation boundaries)
Mr. Colin Robertson, Swannanoa resident

The following individuals spoke in favor of the Swannanoa incorporation for various reasons noted in the prior presentation:

Mr. David McMahan, Buckeye Cove resident in the Swannanoa area
Dr. Martha Stiles, Lytle Cove resident
Mr. Ron Hillabrand, member of the Task Force

Mr. Jake Quinn, Asheville resident, felt Asheville should take the lead with Buncombe County and other municipalities to develop a Buncombe County comprehensive land use plan.

Mr. Dwight Buckner, Asheville resident, felt it makes sense to clearly identify Asheville's and Swannanoa's potential growth area ahead of time.

Councilwoman Cape clarified that what is in front of City Council is that there would be a referendum and that is what City Council is supporting, noting that the State would have to make that decision.

Councilwoman Jones pointed out that Asheville needs, but does not have, the rights and privileges to grow that all other cities in North Carolina have.

Vice-Mayor Davis noted that prior to Councilman Mumpower leaving, Councilman Mumpower noted that he could be supportive of the Swannanoa incorporation, so long as there is a referendum.

Vice-Mayor Davis said that even though this Council doesn't have any decision-making authority in most of this discussion, we do care what happens to Asheville's citizens and our boundaries. We would do less a favor to our constituents if we didn't look at the real cause and effect to Asheville residents. The realities are that all municipalities in Buncombe County need to sit down and talk about where we see growth, where do we see people needing another layer of government, where do we need services provided, etc.

The motion made by Councilwoman Cape and seconded by Councilman Newman carried unanimously.

In response to Assistant City Manager Richardson, it was the consensus of Council to have City staff meet with the Task Force and report back to Council in 4 weeks; however, Council would be amenable to an extension to that 4 weeks (due to workload of the Planning & Development Department), if necessary.

C. RESOLUTION NO. 08-64 - RESOLUTION ADOPTING THE DOWNTOWN PARKING STUDY PREPARED BY KIMLEY-HORN

Director of Transportation and Engineering Cathy Ball said that this is the consideration of a resolution adopting the Downtown Parking Study prepared by Kimley-Horn.

In July 2007, Council authorized Kimley-Horn to complete a Parking Study of Downtown Asheville. The study focused on the determining the demand versus supply for parking. The process included a public involvement component, an evaluation of existing conditions, future conditions, and parking operations and management.

The public involvement component included holding public workshops. The first public workshop was held on November 29, 2008. Approximately 50 people attended this meeting. The second workshop was held on January 30, 2008. At both meetings, the attendees were asked to take a survey of the existing parking system. The results from this information are provided in the report.

For the purpose of evaluating parking supply verses demand, the Central Business Area was broken into thirteen zones. In order to compare the data collected in this parking study with the one completed in 1998, the consultant utilized the same zones as the 1998 study.

The consultant conducted an existing parking inventory of the area. Field surveys of occupancy and turnover were conducted from August 22 to August 27, 2007.

Existing demand was collected by evaluating existing land uses. Attendees at both public workshops were asked to review this data and comment. The consultant met with Planning Department staff to evaluate future projects. If a project had been submitted to the

Planning Department for consideration it was included in the future conditions. For example, projects such as the Ellington and the County Parking at the Health Department were incorporated in the future supply and demand.

The results indicated a parking deficit in the Battery Park, Lexington Avenue, City/County Plaza and Biltmore Avenue during the weekday.

The study also evaluated the parking operations and management. The results indicated the need for better wayfinding and revenue control equipment. We are currently working on both of these items.

This study cost $97,500 and was paid for in the Parking Enterprise Fund.

Pro:

- This study provides data that allows us to make better decisions about where to locate parking facilities and/or other parking amenities.

Con:

- One person complained that we did not allow enough notice of the public meetings. We gave one to two weeks notice of both public meetings.

Staff recommends City Council approve a resolution adopting the Downtown Parking Study prepared by Kimley-Horn.

Using a PowerPoint presentation, Mr. Fred Burchett, representing Kimley-Horn, explained that a parking study (1) reviews existing land uses and parking demands; (2) reviews existing parking supply; (3) identifies existing parking deficiencies; and (4) determines existing/future parking needs. Using a map, he showed the study area and parking analysis zones.

He said that the following was included in the study: (1) Determine locations with heaviest parking demands; (2) Public workshops (November 2007 and January 2008); (3) Develop parking demand model; (4) Identify potential shared uses of parking; (5) Evaluate existing parking operations; and (6) Provide recommendations to improve parking study

He noted that only 24% of the total supply is available to the general public. In addition, the parking facilities approach or exceed occupancy between 11 a.m. and 4 p.m. on weekdays and 7:00 p.m. and 10:00 p.m. on weekends.

Public involvement included (1) what they heard (a) perception of parking in downtown is bad; (b) not enough parking; (c) need public/private shared parking; (d) wayfinding needs improvement; (e) security is lacking in garages; (f) promote alternative transportation modes; and (g) parking during special events is difficult.

The following solutions are supported: (1) increase parking rates - 6%; (2) provide additional parking - 25%; (c) satellite park and ride - 19%; (d) better wayfinding - 21%; (e) better security - 15%; and (f) easier payment methods.

As might be suspected, the largest parking deficits are located nearest to prime destinations, e.g., Grove Arcade, Lexington Avenue, Biltmore Avenue and Haywood Street.

Using a chart, he showed a parking demand model (weekday analysis).

He showed a map of the existed peak demand as well as a map of the projected future peak demand.

Regarding parking operations/management, (1) existing revenue control equipment is outdated (currently under bid to be replaced); (2) poor perception of security, particularly in the Civic Center garage; and (3) wayfinding system needs improvement (Task Force currently finalizing plans).

He showed a parking rate comparison for on-street and off-street parking with other cities: Greenville, South Carolina; Knoxville, Tennessee; and Chattanooga, Tennessee.

The financial analysis shows: (1) parking system currently operates with a surplus; and (2) with projected growth of staff and new parking facilities, the system is projected to operate at a deficiency by the 2012-2013 fiscal year.

Recommended improvements include (1) better payment options (a) smart cards; (b) pay stations; and (c) pay by phone; (2) better way finding (a) consistent signage; and (b) technology (parking availability on the website); (3) park and ride (a) satellite lots outside of downtown; (4) update revenue collection equipment; and (5) increase night time security in parking garages.

Potential improvements include (1) continue to increase rates periodically (a) keep first hour free; (b) charge hourly rates on nights and weekends in parking garages; and (c) increase daily maximum rate; and (2) potential new facilities (a) Rankin Avenue; (b) Biltmore Avenue; and (c) Grove Arcade area.

Throughout discussion, Mr. Burchett and Ms. Ball responded to various questions/comments from Council, some being, but are not limited to: what is the feasibility of the park and ride and what would be the first steps to proceed in that direction; could some of the park and ride study analysis be built into the route analysis of the transit system; what is the consultant's opinion on the first hour free parking in the garages; if new decks are built, should we continue with the first hour of free parking in the new decks; are there some creative solutions that other cities have done to offer incentives to local businesses to allow parking during certain times; what type of challenges would staff have working with local businesses to reach an agreement on public parking on private lots; this plan is a good piece of data to incorporate into the Downtown Master Planning process; how can this plan be referenced when Council reviews development projects; how will the plan be used; and request that staff look for ways to better direct people to parking garages.

Upon inquiry of Councilman Newman, Ms. Ball said that there are monthly parking spaces available in the Civic Center Garage, as well as some on the paid street parking lots, and some are quite affordable.

Vice-Mayor Davis noted that prior to Councilman Mumpower leaving, Councilman Mumpower noted that the plan was expensive and doesn't tell us anything we don't already know.

In response to Councilwoman Cape, Ms. Ball said that Kimley-Horn is on the team of the Downtown Master Plan.

Vice-Mayor Davis said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Newman moved for the adoption of Resolution No. 08-64. This motion was seconded by Councilwoman Cape and carried unanimously.

Due to the oversight of public comment not being taken prior to the vote, Vice-Mayor Davis apologized and asked for public comment.

Mr. Jake Quinn felt that the people who need parking downtown are downtown merchants and out of town tourists and they should be the ones who pay for any additional parking.

Mr. Dwight Buckner, member of the Asheville Downtown Association, explained how having an accessible downtown and parking is important to the entire community. He spoke briefly on some of the recommendations and thanked Council for having the study prepared.

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D. DOWNTOWN MORATORIUM DISCUSSION

City Attorney Oast said that while not used frequently, development moratoria have been used in various contexts across the country. Development moratoria have also been used in North Carolina, but issues regarding the process for adoption and the scope and duration of those moratoria were the subject of litigation. In 2005, the N.C. General Assembly amended the planning enabling statutes to provide for moratoria. This amendment essentially codified the case law on this topic.

If Council decides to proceed with a moratorium, the scope and duration of it, as well as the conditions necessitating its adoption, must be clearly identified. Unless the moratorium is in response to an emergency and is of very limited duration, a public hearing is required. The notice requirements for the public hearing vary depending on the duration of the moratorium.

If adopted, the moratorium would only apply prospectively. The effectiveness of a moratorium as to certain types of development approvals varies depending on the nature of the permit or approval. In general, however, projects for which permits have been issued, or for which completed applications have been submitted, would not be affected by a moratorium. The moratorium must also specify the steps that the City proposes to take to address the conditions leading to the adoption.

If Council decides to proceed with a moratorium, the parameters of the moratorium (duration, scope, conditions, etc.) should be identified.

Councilwoman Cape said that many people in our community were concerned that with so many items coming forward that we might be compromising the downtown Master Planning process (which has a duration of approximately 6-9 months). Council has supported the Master Planning process, which will begin in April, and urged people to participate in that process. She said that since it will take approximately 4 months to get a moratorium in place, a moratorium could moot if people participate in the Master Planning process. This is a very important endeavor for the future of downtown.

Vice-Mayor Davis, member on the Downtown Commission, said that the Downtown Commission considered the matter and the majority consensus was opposition to a moratorium. In addition, the Downtown Commission felt that they should have been contacted prior to the issue being considered by Council, since they are the advisory body appointed by City Council to have input on downtown issues.

Councilwoman Cape felt there should be a process on how Council members get an item placed on the agenda. She would have been happy to have the Downtown Commission review this matter, however, since there are so many layers of committees, it's not clear on how Council should bring matters forward.

After Vice-Mayor Davis polled Council on whether to take public comment since there was no motion or proposal on the table, public comment was invited.

Mr. Jesse Junior urged Council to proceed with a moratorium in order to analyze if Asheville is moving in the right direction.

Ms. Elaine Lite spoke in favor of a moratorium, which is a legal planning tool in the State of North Carolina.

Mr. Dwight Buckner, member of the Asheville Downtown Commission, spoke in support of the Downtown Master Plan and spoke against a moratorium.

Councilman Russell noted that that there was extensive community involvement in the 2025 City Plan, which calls for a vibrant Central Business District.

E. RESOLUTION NO. 08-65 - RESOLUTION APPOINTING MEMBERS TO THE BOARD OF ADJUSTMENT

Vice-Mayor Davis, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing members to the Board of Adjustment.

The terms of Tom Muncy (Regular), Beverly Robinson (Regular) and David Brown (Alternate) expired on January 21, 2008.

On February 19, 2008, City Council instructed the City Clerk to arrange interviewed for the following individuals: David Brown (current Alternate) Lee McElrath (current Alternate), Anthony Palazoo and Ester Manheimer.

After Council spoke highly of the candidates, David Brown received 1 vote, Lee McElrath received 5 votes, Anthony Palazoo received no votes and Ester Manheimer received 4 votes. Therefore, Councilwoman Jones moved to (1) appoint Lee McElrath and Esther Manheimer as Regular members to the Board of Adjustment to each serve three-year terms respectively, terms to expire January 21, 2011, or until their successors have been appointed. This motion was seconded by Councilman Russell and carried unanimously.

Councilwoman Cape moved to reappoint David Brown as an Alternate member to serve an additional three-year term, term to expire January 21, 2011, or until his successor has been appointed. This motion was seconded by Councilman Newman and carried unanimously.

In addition, Council instructed City Clerk Lipe to advertise for the Alternate vacancy left by Mr. McElrath whose term will expire on January 21, 2010.

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F. RESOLUTION NO. 08-66 - RESOLUTION APPOINTING A MEMBER TO THE CIVIC CENTER COMMISSION

Vice-Mayor Davis, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing a member to the Civic Center Commission.

Mr. Tim Laughlin has resigned from the Civic Center Commission, thus leaving an unexpired term until June 30, 2009.

On February 19, 2008, City Council instructed the City Clerk to arrange interviewed for the following individuals: J. Michael Burke and John West.

After Council spoke highly of the candidates, J. Michael Burke received 2 votes and John West received 2 votes. Another vote was taken and J. Michael Burke received 3 votes and John West received 1 vote. Therefore, Councilwoman Jones moved to appoint J. Michael Burke to

serve the unexpired term of Mr. Laughlin, term to expire June 30, 2009, or until his successor has been appointed. This motion was seconded by Councilwoman Cape and carried unanimously.

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G. RESOLUTION NO. 08-67 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE-BUNCOMBE COMMUNITY RELATIONS COUNCIL

Vice-Mayor Davis, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing members to the Asheville-Buncombe Community Relations Council.

Ms. Veronica Sotolongo resigned, thus leaving an unexpired term until December 31, 2008; and the term of Jose Ruiz expired on December 31, 2007.

On February 19, 2008, City Council instructed the City Clerk to arrange interviewed for the following individuals: Sid Heilbraun, Kelly Stamey, Kate Pett and Jill Fromewick.

After Council spoke highly of the candidates, Sid Heilbraun received no votes, Kelly Stamey received no votes, Kate Pett received 4 votes and Jill Fromewick received 4 votes. Therefore, Councilman Newman moved to (1) appoint Kate Pett to serve a three year term, term to expire December 31, 2010, or until her successor has been appointed; and (2) appoint Jill Fromewick to serve the unexpired term of Ms. Sotolongo, term to expire December 31, 2008, or until her successor has been appointed. This motion was seconded by Councilwoman Jones and carried unanimously.

RESOLUTION BOOK NO. 31 - PAGE 128

H. RESOLUTION NO. 08-68 - RESOLUTION APPOINTING MEMBERS TO THE FILM COMMISSION

Vice-Mayor Davis, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing a member to the Film Commission.

Ms. Melinda Rains has resigned from the Film Commission, thus leaving an unexpired term until November 1, 2010.

On February 19, 2008, City Council instructed the City Clerk to arrange interviewed for the following individuals: David Flander, Trent McDevitt, Nancy Sokolove and Heidi Campbell-Robinson.

After Council spoke highly of the candidates, David Flander received 4 votes, Trent McDevitt received no votes, Nancy Sokolove received no votes and Heidi Campbell-Robinson received 1 vote. Therefore, Councilman Newman moved to appoint David Flander to serve the unexpired term of Ms. Rains, term to expire November 1, 2010, or until his successor has been appointed. This motion was seconded by Councilwoman Cape and carried unanimously.

RESOLUTION BOOK NO. 31 - PAGE 129

I. RESOLUTION NO. 08-69 - RESOLUTION APPOINTING MEMBERS TO THE SUSTAINABLE ADVISORY COMMITTEE ON ENERGY AND THE ENVIRONMENT

Vice-Mayor Davis, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing members to the Sustainable Advisory Committee on Energy and the Environment.

The term of Jonathan Barnes expired on December 31, 2007.

On February 19, 2008, City Council instructed the City Clerk to arrange interviewed for the following individuals: Melanie Brethauer, Brandee Boggs, Marcus Renner, Ashley Featherstone, Kristin M. Peppel and Daniel Asher.

After Council spoke highly of the candidates, Melanie Brethauer received 2 votes, Brandee Boggs received no votes, Marcus Renner received no votes, Ashley Featherstone received 1 vote, Kristin M. Peppel received no votes and Daniel Asher received 1 vote. Therefore, Councilman Russell moved to appoint Melanie Brethauer to serve a three year term, term to expire December 31, 2010, or until her successor has been appointed. This motion was seconded by Councilman Newman and carried unanimously.

RESOLUTION BOOK NO. 31 - PAGE 130

J. RESOLUTION NO. 08-70 - RESOLUTION APPOINTING MEMBERS TO THE TRANSIT COMMISSION

Vice-Mayor Davis, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing members to the Transit Commission.

The term of Robert Mair expired on December 31, 2007.

On February 19, 2008, City Council instructed the City Clerk to arrange interviewed for the following individuals: Michael Orford, Josh O'Conner, Larry D. Chapman, David Lack and Bruce Emory.

After Council spoke highly of the candidates, Michael Orford received no votes, Josh O'Conner received 2 votes, Larry D. Chapman received 1 vote, David Lack received 1 vote and Bruce Emory received 1 vote. Therefore, Councilwoman Cape moved to appoint Josh O'Conner to serve a three year term, term to expire December 31, 2010, or until his successor has been appointed. This motion was seconded by Councilwoman Jones and carried unanimously.

RESOLUTION BOOK NO. 31 - PAGE 131

VII. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of February 22-March 13, 2008: Kristopher Price (Transit), Estalee King (Police), AT&T (Water), Jane Pimenta (Water), Progress Energy (Water), Stan Clontz (Water), Neill S. Mason (Water), AT&T (Water), Robert T. Bayer (Streets), AT&T (Water) and Mary Mullinax (Fire).

These claims have been referred to Asheville Claims Corporation for investigation.

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Brad Brock asked for Council assistance in requiring stormwater runoff protection from the Thoms Estate development. Vice-Mayor Davis said that City staff will investigate and report back to Council.

At the request of Councilman Newman, it was the consensus of Council to schedule a worksession on an update of the new City's stormwater ordinance.

Mr. Dwayne Barton hoped that Council will be creative in providing for more opportunities for the youth in our community.

IX. ADJOURNMENT:

Vice-Mayor Davis adjourned the meeting at 10:10 p.m.

CITY CLERK

MAYOR

Tuesday – April 8, 2008 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Councilman William A. Russell Jr.

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilwoman Cape gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING APRIL 13-19, 2008, AS "NATIONAL PUBLIC SAFETY TELECOMMUNICATIONS WEEK"

Mayor Bellamy read the proclamation proclaiming the week of April 13-19, 2008, as "National Public Safety Telecommunications Week" in the City of Asheville. She presented the proclamation to Mr. Joe Fioccola who briefed City Council on some activities taking place during the week.

B. PROCLAMATION PROCLAIMING APRIL, 2008, AS "NATIONAL WOODWORKING MONTH"

Vice-Mayor Davis read the proclamation proclaiming the month of April, 2008, as "National Woodworking Month" in the City of Asheville. He presented the proclamation to Mr. Jim Miller, from Asheville Hardware, who briefed City Council on some activities taking place during the month.

C. PROCLAMATION PROCLAIMING APRIL, 2008, AS "CHILD ABUSE PREVENTION MONTH"

Councilwoman Jones read the proclamation proclaiming the month of April, 2008, as "Child Abuse Awareness Month" in the City of Asheville. She presented the proclamation to Mr. Bill McGuire and Ms. Tammy Shook who briefed City Council on some activities taking place during the month.

D. PROCLAMATION PROCLAIMING APRIL, 2008, AS "JAZZ APPRECIATION MONTH"

Councilwoman Cape read the proclamation proclaiming the month of April, 2008, as "Jazz Appreciation Month" in the City of Asheville. She presented the proclamation to Mr. Bo Farson, on behalf of the WNC Jazz Society, who briefed City Council on some activities taking place during the month.

E. PROCLAMATION PROCLAIMING APRIL, 2008, AS "ALCOHOL AWARENESS MONTH"

Councilman Mumpower read the proclamation proclaiming April, 2008, as "Alcohol Awareness Month" in the City of Asheville. He presented the proclamation to Ms. Marie Nemerov who briefed City Council on some activities taking place during the month.

II. CONSENT AGENDA:

Mayor Bellamy announced that Consent Agenda Item "C" has been removed from Council's consideration.

At the request of Councilman Mumpower, Consent Agenda Items "G," H," and "I" were removed from the Consent Agenda for discussion and/or an individual votes.

At the request of Mayor Bellamy, Consent Agenda Items "J," and "N" were removed from the Consent Agenda for discussion and/or an individual votes.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MARCH 25, 2008

B. ORDINANCE NO. 3600 – BUDGET AMENDMENT FROM THE CITY'S INSURANCE RESERVES TO PAY FOR LIABILITY CLAIM EXPENSES THAT HAVE BEEN PREVIOUSLY APPROVED BY CITY COUNCIL

Summary: The consideration of a budget amendment, in the amount of $450,000, from the City's insurance reserves to pay for liability claims expenses that have been previously approved by City Council.

Although there are numerous matters in which the City can assert Governmental Immunity, there are instances when the City becomes liable for damages. Claims expenses in the current year are higher than normal due to pay out of several claims that have occurred in prior budget years. Payment of these claims has already been approved by City Council at previous meetings. This budget amendment will increase the claims budget by $450,000 to fund these additional approved expenses. Revenue to support this amendment will come from the City's insurance reserves. This appropriation will have no impact on the City's available fund balance.

It is estimated that fund balance for the general liability program will end the year at approximately $5.0 million, which is well above the minimum recommended threshold based on actuarial analysis.

City staff recommends City Council adopt the budget amendment to amend the General Insurance and Liability budget to increase the claims budget by $450,000.

ORDINANCE BOOK NO. 24 – PAGE 890

C. RESOLUTION AUTHORIZING THE MAYOR TO CONVEY PROPERTY AT THE CORNER OF BAXTER STREET AND MARTIN LUTHER KING JR. DRIVE TO DAVID FRECK

This item was removed from consideration by City Council.

D. RESOLUTION NO. 08-72 – RESOLUTION AUTHORIZING THE MAYOR TO SIGN A MUNICIPAL AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR THE INSTALLATION OF A CONCRETE SIDEWALK ALONG THE WEST SIDE OF NC 191 (BREVARD ROAD) FROM I-26 TO I-40, EXCLUDING BRIDGES

Summary: The consideration of a resolution authorizing the Mayor to sign a municipal agreement with the N. C. Dept. of Transportation (NCDOT) for the installation of a concrete sidewalk along the west side of NC 191 (Brevard Road) from I-26 to I-40, excluding bridges.

NCDOT plans to widen NC 191 (Brevard Road) from I-26 to I-40 to a multi-lane facility including a sidewalk along the west side of the road. It is anticipated that the subject project will be let to construction during June 2008. As a part of the subject project, the City has requested that the sidewalk be installed.

The agreement will require NCDOT to pay up 60% of the actual cost and the City of Asheville to pay 40% of the actual costs. The estimated cost of the sidewalk is $142,000 and the City's portion of that cost should be $56,800. This payment is not due to NCDOT until the project is complete which is estimated to be during Fiscal Year 2009-10; therefore, the funds for this project will be budgeted in Fiscal Year 2009-10.

As part of this agreement the City will be responsible for maintaining the sidewalk which is standard operating procedure for all sidewalks on State-maintained streets.

In addition to participating in the sidewalk construction, the City agrees to effect the necessary adjustment of any utilities under franchise without cost to the NCDOT and to provide for the adjustment of any municipally-owned utilities without cost to the NCDOT, except that the NCDOT will reimburse the City in accordance with the NCDOT's Municipally-Owned Utility Policy. These requirements are standard requirements in all of NCDOT's Municipal Agreements and may or may not be applicable for a specific project. Since the City of Asheville does not have any utilities under franchise, this specific requirement is not applicable. It is anticipated that municipally-owned water lines will be relocated as a part of the subject project and a separate utility agreement, detailing the specific requirements and associated costs, will be forthcoming. The Water Resources Department has not reviewed proposed project plans at this time.

The estimated cost to the City is $56,800 which will be budgeted in Fiscal Year 2009-10. A separate utility agreement will include the specific requirements and associated costs with the relocation of municipally-owned water lines.

Pros

- The City is only required to pay 40% of the total cost of the sidewalk as opposed to 100%.
- A sidewalk will be provided along a section of street that does not currently have a sidewalk.
- The cost to construct the sidewalk should be cheaper since it is being constructed at the same time as the street is being widened.

Con:

- Cost

The City has to pay $56,800 for the sidewalk installation and costs associated with maintaining the sidewalk after it is installed.

Staff recommends that City Council approve a resolution authorizing the Mayor to sign a municipal agreement with NCDOT formally approving Project U-3601 including the installation of a concrete sidewalk along the west side of NC 191 (Brevard Road) from I-26 to I-40, excluding bridges.

RESOLUTION BOOK NO. 31 – PAGE 133

E. RESOLUTION NO. 08-73 – RESOLUTION AUTHORIZING THE MAYOR TO SIGN A MUNICIPAL AGREEMENT WITH THE N.C. DEPT. OF

TRANSPORTATION APPROVING THE REPLACEMENT OF BRIDGE #39 OVER THE SWANNANOA RIVER ON NC 81

Summary: The consideration of a resolution authorizing the Mayor to sign a municipal agreement with the N.C. Dept. of Transportation (NCDOT) approving the replacement of Bridge # 39 over the Swannanoa River on NC 81.

NCDOT plans to replace Bridge # 39 over the Swannanoa River on NC 81. As a part of the agreement, the City agrees to effect the necessary adjustment of any utilities under franchise without cost to the NCDOT and to provide for the adjustment of any municipally-owned utilities without cost to the NCDOT, except that the NCDOT will reimburse the City in accordance with the NCDOT's Municipally-Owned Utility Policy. These requirements are standard requirements in all of NCDOT's Municipal Agreements and may or may not be applicable for a specific project. Since the City of Asheville does not have any utilities under franchise, this specific requirement is not applicable. The Water Resources Department has reviewed the proposed project plans and it is anticipated that municipally-owned water lines will *not* be relocated as a part of the subject project; therefore, a separate utility agreement, detailing the specific requirements and associated costs, is not needed.

Pros:

- An existing sub-standard bridge along a primary highway will be replaced.
- There is *no* cost to the City of Asheville.

Con:

- There are *no* identifiable cons.

There is *no* estimated cost to the City.

Staff recommends that City Council approve a resolution authorizing the Mayor to sign a municipal agreement with NCDOT formally approving Project B-2515.

RESOLUTION BOOK NO. 31 – PAGE 134

F. RESOLUTION NO. 08-74 – RESOLUTION AUTHORIZING THE MAYOR TO SIGN A MUNICIPAL AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION APPROVING THE REPLACEMENT OF BRIDGE #85 OVER HOMINY CREEK ON NC 112 (SAND HILL ROAD)

The consideration of a resolution authorizing the Mayor to sign a municipal agreement with the N. C. Dept. of Transportation (NCDOT) approving the replacement of Bridge # 85 over Hominy Creek on NC 112 (Sand Hill Road).

NCDOT plans to replace Bridge # 85 over Hominy Creek on NC 112 (Sand Hill Road). As a part of the agreement, the City agrees to effect the necessary adjustment of any utilities under franchise without cost to the NCDOT and to provide for the adjustment of any municipally-owned utilities without cost to the NCDOT, except that the NCDOT will reimburse the City in accordance with the NCDOT's Municipally-Owned Utility Policy. These requirements are standard requirements in all of NCDOT's Municipal Agreements and may or may not be applicable for a specific project. Since the City of Asheville does not have any utilities under franchise, this specific requirement is not applicable. The Water Resources Department has reviewed the proposed project plans and it is anticipated that municipally-owned water lines will *not* be relocated as a part of the subject project; therefore, a separate utility agreement, detailing the specific requirements and associated costs, is not needed.

Pros:

- An existing sub-standard bridge along a primary highway will be replaced.

- There is *no* cost to the City of Asheville.

Con:

- There are *no* identifiable cons.
- There is *no* estimated cost to the City.

Staff recommends that City Council approve a resolution authorizing the Mayor to sign a municipal agreement with the NCDOT formally approving Project B-4033.

RESOLUTION BOOK NO. 31 – PAGE 135

G. RESOLUTION AUTHORIZING THE MAYOR TO ACCEPT THE CITY OF ASHEVILLE DESIGNATION TO RECEIVE JOB ACCESS AND REVERSE COMMUTE AND NEW FREEDOM FUNDS

This item was removed from the Consent Agenda for discussion and/or an individual vote.

H. RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR THE REIMBURSEMENT OF FUNDS TO BE EXPENDED FOR TRANSIT SERVICE TO WEAVERVILLE, N.C.

This item was removed from the Consent Agenda for discussion and/or an individual vote.

I. RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR THE REIMBURSEMENT OF FUNDS TO BE EXPENDED FOR TRANSIT SERVICE TO BLACK MOUNTAIN, N.C.

This item was removed from the Consent Agenda for discussion and/or an individual vote.

J. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH CAROLINA MOUNTAIN ROOFING AND CONSTRUCTION INC. FOR ROOF REPLACEMENT AT MONTFORD RECREATION CENTER, EAST ASHEVILLE RECREATION CENTER AND OAKLEY RECREATION CENTER

This item was removed from the Consent Agenda for discussion and/or an individual vote.

K. RESOLUTION NO. 08-79 – RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A CONTRACT WITH THE N.C. DEPT. OF TRANSPORTATION FOR THE WIDENING OF NC 146 (LONG SHOALS ROAD) IN PHASED PROJECTS

Summary: The consideration of a resolution authorizing the Mayor to enter into a contract with the N.C. Dept. of Transportation (NCDOT) for the widening NC 146 Long Shoals Road in phased projects.

Project R-2813 B is from west of Clayton Road to east of I-26. The original municipal agreement with NCDOT for this project was approved by City Council on June 27, 2006 with a cost of $876,850. This supplemental agreement adds polyethylene encasement to approximately

4,917 feet (3,740 lf of 24 inch and 1,177 lf of 12 inch) of water pipe. This is required due to the close proximity of high pressured gas mains along this road and that the gas mains have an electrical charge which can cause water lines to corrode and creates a safety issue for our employees when digging around these lines.

This supplemental agreement is required to provide added safety and extend the life of the new water lines along this phase of the Long Shoals Road NCDOT project. The cost of this upgrade is $42,001.30 to the original utility agreement. The new cost for this project is $918,851.30. Funding for this project is programmed in FY 2008/09 and FY 2009/10 with payment to NCDOT to be made in three annual payments after work is completed.

Pros:

- This project will eliminate two problematic water lines including a permestran fiberglass line on this section of Long Shoals Road which will enhance customer service by eliminating breaks and outages.
- The polyethylene enclosure will enhance employee safety and extend the life of the new water line.

Con:

- Cost

Increased funding of $42,001.30 is required in Fiscal Year 2009/10 to cover this additional cost.

Staff recommends approval for the Mayor to execute the Supplemental Utility Agreement with NCDOT for the Project: R-2813 B.

RESOLUTION BOOK NO. 31 – PAGE 140

L. RESOLUTION NO. 08-80 – RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR ROADWAY IMPROVEMENTS ON US 70-74 (TUNNEL ROAD) FROM THE TUNNEL TO KENILWORTH ROAD

Summary: The consideration of a resolution authorizing the Mayor to enter into an agreement with the N.C. Dept. of Transportation (NCDOT) for roadway improvements on US 70-74 Tunnel Road from the tunnel to Kenilworth Road; and the associated budget amendment, in the amount of $75,000.

The Water Resources Department is installing a new 24 inch water line in part of Tunnel Road as part of the Revenue Bond Projects which will enable the three lines on top of the tunnel to be replaced. The City of Asheville participation is 25% of the repaving project cost. This opportunity to participate in this NCDOT project enables the department to replace aging infrastructure with minimum repaving costs. Approximately 3,400 feet of road will be repaved from the tunnel to Kenilworth Road.

NCDOT is making street and highway constructions and improvements within Asheville city limits. Based on the total project cost of $300,000.00, the Water Resources Department has negotiated a participation rate of 25%, or $75,000.00, of the total project cost. This is only an estimate from NCDOT and the actual cost could be lower or higher. This is a local NCDOT project and was not on the State NCDOT project lists for capital improvement funding so funding has not been set aside for this project. This project will improve roadway conditions for local motorists.

Pros:

- This project will improve local roadway conditions by the milling and resurfacing of US 70-74 Tunnel Road from the tunnel to Kenilworth Road.
- Water infrastructure that is over 90 years old will be upgraded.

Cons:

- There are no cons to this project. The Water Resources Department would have to resurface Tunnel Road as part of the infrastructure improvements. Funds are being allocated in the current fiscal year's capital funding.

Funds for this project will be allocated through FY 2007/2008 water capital funding.

Staff recommends approval for the Mayor to execute the Maintenance Agreement with NCDOT for Project: 13CR.10111.7, and the associated budget amendment.

RESOLUTION BOOK NO. 31 – PAGE 141

M. ORDINANCE NO. 3601 – BUDGET AMENDMENT TO REPROGRAM FUNDS IN THE CAPITAL PROJECTS TO CREATE A BUDGET FOR THE N.C. DEPT. OF TRANSPORTATION ROADWAY IMPROVEMENTS ON US 70-74 (TUNNEL ROAD) FROM THE TUNNEL TO KENILWORTH ROAD

Summary: See Consent Agenda "L" above.

ORDINANCE BOOK NO. 24 – PAGE 392

N. RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE EARTH DAY CELEBRATION ON SATURDAY, APRIL 19, 2008, AT MARTIN LUTHER KING JR. PARK

This item was removed from the Consent Agenda for discussion and/or an individual vote.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilwoman Jones moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Cape and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

G. RESOLUTION NO. 08-75 – RESOLUTION AUTHORIZING THE MAYOR TO ACCEPT THE CITY OF ASHEVILLE DESIGNATION TO RECEIVE JOB ACCESS AND REVERSE COMMUTE AND NEW FREEDOM FUNDS

Summary: The consideration of a resolution authorizing the Mayor to accept the City of Asheville designation to receive Job Access and Reverse Commute (JARC), and New Freedom funds.

In 2006, the Federal Transit Administration initiated two new formula grant programs, the Job Access and Reverse Commute and the New Freedom programs, to improve and enhance accessibility to public transportation to low-income individuals and individuals with disabilities.

JACR, previously a discretionary program, is a formula grant program oriented to provide job access in the urbanized and suburbanized area. The formula is based on the number of eligible low-income and welfare recipients in these areas.

The job access refers to projects relating to the development and maintenance of transportation services designed to transport welfare recipients and eligible low-income individuals to and from jobs and activities related to their employment.

The reverse commute refers to a public transportation project designed to transport residents of urbanized areas and other than urbanized areas to suburban employment opportunities.

New Freedom is also a FTA formula grant program for new public transportation services and public transportation alternatives beyond those required by the Americans with Disabilities Act of 1990. These funds are intended to assist individuals with disabilities with transportation, including transportation to and from jobs and employment support services.

The allocations for both programs are shown below:

UZA	5316 - JARC			Total
	FY 06*	FY 07	FY 08	
Asheville	$ 114,045	$ 120,215	$ 130,233	$364,493
	5317 - New Freedom			Total
	FY 06*	FY 07	FY 08	
	$ 67,545	$ 77,517	$ 83,737	$228,799

(*)2006 funds will lapse on September 30, 2008.

To be eligible, both programs require an intensive planning process based on community participation to be achieved through three workshops (Buncombe, Haywood and Henderson County); the result is to be a Coordinated Public Transportation and Human Services Transportation Plan or LCTP. The LCTP, which assesses current transportation needs, identifies gaps and sets goals, will be developed based on the results of the workshops. The plan will be adopted by the French Broad River MPO's governing body, the Transportation Advisory Committee, which is made up of elected representatives from each of the eighteen local governments which make up the MPO. They include Buncombe, Haywood, and Henderson County, and each of the incorporated municipalities in the three counties.

The LCTP will set the base to apply for projects; all the projects that apply for funds must respond to these assessment. The main stakeholders were invited to the workshop, among them Asheville Transit, Mountain Mobility, human service agencies, public and private transportation providers, NCDOT and general public.

Pros:

- The JARC program may increase the ability of transportation providers and other agencies to fulfill gaps to job access in both the urbanized and suburban areas.
- The New Freedom program may give opportunities to agencies to provide new services to individuals with disabilities.

Con:

- The use of City staff to administer the program and oversee the contracts will add additional workload, but may be achieved with existing staff levels.

The City will be responsible for the Program Management and, as designated recipient, to oversee the utilization of these funds according to FTA regulations. The program management

will require the use of city resources, mainly staff. As a designated recipient the city may use 10% of these funds for administration purposes, which will cover the program management expenses.

The planning process will bring a clear understanding of needs in the region and will help with future transportation planning initiatives, while the funds allocated to fulfill some of these needs will benefit the population in general. Therefore, it is staff recommendation to accept the designation.

These funds totalize $364,493 for JARC and $228,799 for New Freedom, and represent the Federal allocations for Fiscal Years 2006, 2007 and 2008.

As the designated recipient, the City of Asheville will receive $364,493 and $228,799 for Job Access and Reverse Commute and New Freedom funds respectively. These funds will be distributed among the projects selected for such programs.

City staff recommends City Council adopt a resolution authorizing the Mayor to accept the City of Asheville designation as a recipient of the Job Access and Reverse Commute, and New Freedom funds.

Councilman Mumpower said that when we have a $10 Trillion national debt, he could not support acceptance of these grant programs.

Councilman Newman moved for the adoption of Resolution No. 08-75. This motion was seconded by Councilwoman Cape and carried on a 5-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 31 – PAGE 136

H. RESOLUTION NO. 08-76 – RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR THE REIMBURSEMENT OF FUNDS TO BE EXPENDED FOR TRANSIT SERVICE TO WEAVERVILLE, N.C.

Summary: The consideration of a resolution authorizing the Mayor to enter into an agreement with the N. C. Dept. of Transportation (NC DOT) for the reimbursement of funds to be expended for service to Weaverville.

The NC DOT has tendered a contract to the Asheville Transit System in which the NC DOT will contribute funds for bus service to Weaverville. The Asheville Transit System operates said service.

Asheville Transit System operates an intercity bus route between the City of Asheville and the Town of Weaverville along US 25 Business with stops at UNCA, along Merrimon Avenue, in downtown Weaverville, at the Rose's Shopping Center, SonoPress, and other locations along the route. The service will operate five times per day, six times per week. The State and the Town of Weaverville have funded the entire amount of the operating costs less fare box revenue. The total budgeted cost for this project is $124,604 for the Fiscal Year July 1, 2007 through June 30, 2008. The State of NC is providing $110,604 for this Intercity Project. The Town of Weaverville has budgeted $10,000 to this route. The balance of $4,000 is expected from farebox revenues. Ridership on this route in FY 2007 was 14,678 more than doubled last's year ridership (6,254). Ridership in the current fiscal year is expected to be approximately 17,000.

Conformance to City Development Plan 2025: Goal VI: Develop a transit system that is capable of meeting the needs of all residents of and visitors to the region: Strategy 4: Expand inter-city service to Hendersonville, Black Mountain, Weaverville, Mars Hill, and Sylva.

Conformance to Strategic Plan: Strategic Plan Section on Planning, Goal 2: (1) Objective A, Creating a Multi-modal Transportation System, leveraging outside funding sources; and (2) Objective B, by creating a partnership between the state, the Town of Weaverville and the Asheville Transit System to mitigate congestion.

This action complies with the Strategic Operating Plan in the Planning Focus Area- Goal #2-A Multi-modal Transportation System, leveraging outside funding sources.

The City of Asheville will receive $124,604 for intercity route operations between Asheville and the Town of Weaverville. These funds are currently programmed in the City budget, with no City funds being expended.

Pro:

- Increased mobility for the citizens of Asheville both within and outside the city at no additional cost to the City of Asheville.

Con:

- There are no disadvantages to the City of Asheville.

There are no City funds in this operation, and the City is specifically exempted from funding any of these operations in the contract from the NC DOT for these routes.

City staff recommends adoption of the resolution authorizing the Mayor to enter into an agreement with the N. C. Dept. of Transportation for the reimbursement of funds to be expended for service to Weaverville.

Councilman Mumpower said that his comments relate to this item as well as Consent Agenda Item "I".

After Director of Transportation and Engineering Cathy Ball responded to various questions/comments from Councilman Mumpower, Councilman Mumpower expressed concern over the subsidy involved with the Weaverville and Black Mountain routes and the City's difficulty in maintaining the capital investment in our buses. He had no trouble with the City's effort to connect us to outlying communities, but questioned if we are taking away from our ability to provide services to our own citizens.

Councilman Newman moved for the adoption of Resolution No. 08-76. This motion was seconded by Councilwoman Cape and carried on a 5-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 31 – PAGE 137

I. RESOLUTION NO. 08-77 – RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR THE REIMBURSEMENT OF FUNDS TO BE EXPENDED FOR TRANSIT SERVICE TO BLACK MOUNTAIN, N.C.

Summary: The consideration of a resolution authorizing the Mayor to enter into an agreement with the N. C. Dept. of Transportation (NC DOT) for the reimbursement of funds to be expended for service to Black Mountain.

The NC DOT has tendered a contract to the Asheville Transit System in which the NC DOT will contribute funds for bus service to Black Mountain. The Asheville Transit System will operate said service.

Asheville Transit System operates an intercity bus route between the City of Asheville and the Town of Black Mountain along US 70 with stops at the Asheville Mall, Riverbend Marketplace, Veteran's Administration Hospital, and multiple residential areas. The service operates five times a day, six days a week. All financing will be provided by the State (maximum of $196,500), the Town of Black Mountain ($13,500), Mountain Mobility ($4,000), and Fare Box Revenue (approx. $19,000). The total budgeted cost is $233,000. The contract has a period of performance of 12 months - from July 1, 2007, through June 30, 2008, as well as to pass through funding to Mountain Mobility for the operation of their route in Black Mountain through the same date. These funds are currently programmed in the City budget, with no City funds being expended. Ridership on this route in FY 2007 was 34,800 almost the double than last year (19,727), with ridership in FY 2008 (the period of this contract) expected to be approximately 39,000.

Conformance to City Development Plan 2025: Goal VI: Develop a transit system that is capable of meeting the needs of all residents of and visitors to the region - Strategy 4: Expand inter-city service to Hendersonville, Black Mountain, Weaverville, Mars Hill, and Sylva.

Conformance to Strategic Plan: Strategic Plan Section on Planning, Goal 2: (1) Objective A, Creating a Multi-modal Transportation System, leveraging outside funding sources; and (2) Objective B, by creating a partnership between the state, the Town of Weaverville and the Asheville Transit System to mitigate congestion.

This action complies with the Strategic Operating Plan in the Planning Focus Area- Goal #2-A Multi-modal Transportation System, leveraging outside funding sources.

The City of Asheville will receive $233,000 for intercity route operations between Asheville and the Town of Black Mountain. These funds are currently programmed in the City budget, with no City funds being expended.

Pro: Increased mobility for the citizens of Asheville both within and outside the city at no additional cost to the City of Asheville.

Con: There are no disadvantages to the City of Asheville.

NC DOT reimburses the City for expenditures.

City staff recommends adoption of the resolution authorizing the Mayor to enter into an agreement with the N. C. Dept. of Transportation for the reimbursement of funds to be expended for service to Black Mountain.

Councilman Newman moved for the adoption of Resolution No. 08-77. This motion was seconded by Councilwoman Cape and carried on a 5-1 vote, with Councilman Mumpower voting "no."

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J. RESOLUTION NO. 08-78 – RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH CAROLINA MOUNTAIN ROOFING AND CONSTRUCTION INC. FOR ROOF REPLACEMENT AT MONTFORD RECREATION CENTER, EAST ASHEVILLE RECREATION CENTER AND OAKLEY RECREATION CENTER

Summary: The consideration to authorize the City Manager to enter into a contract with Carolina Mountain Roofing and Construction, Inc. for roof replacement at Montford Recreation

Center, East Asheville Recreation Center and Oakley Recreation Center for an amount of $121,700.

In 2007, City Council approved $150,000 as part of the City's Fiscal Year 2007/08 capital improvement budget for roof replacement at Montford Recreation Center, East Asheville Recreation Center and Oakley Recreation Center. The existing roof systems at these three centers are in need of full replacement since they outlived their useful lives and functioning inadequately resulting in significant leaking and causing damage to the interior of the buildings. The City issued a request for proposals for the roof replacement and the lowest, qualified bid was received from Carolina Mountain Roofing and Construction, Inc. for a cost of $121,700.

Pros:

- The new roofs will prevent further leaking and damage to the interiors of the centers.
- The new roofs will save the City considerable cost in the form of reduced maintenance.

Cons:

- None

The contract amount will not exceed the approved project total of $150,000.

The Parks, Recreation and Cultural Arts Department recommend City Council to authorize the City Manager to enter into a contract with Carolina Mountain Roofing and Construction, Inc. in the amount of $121,700 for roof replacement at Montford Recreation Center, East Asheville Recreation Center and Oakley Recreation Center.

In response to Mayor Bellamy's questions, Parks & Recreation Director Roderick Simmons said that he would provide Council with a breakdown of the allocation of $750,000 allocated by Council for various projects.

When Mayor Bellamy asked about some safety concerns at the W.C. Reid Center, Mr. Simmons explained that they now have a whole new stage.

Councilwoman Jones moved for the adoption of Resolution No. 08-78. This motion was seconded by Councilwoman Cape and carried unanimously.

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N. RESOLUTION NO. 08-81 – RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE EARTH DAY CELEBRATION ON SATURDAY, APRIL 19, 2008, AT MARTIN LUTHER KING JR. PARK

Summary: The consideration of authorizing provisions for the possession and consumption of malt beverages and/or unfortified wine at the Asheville Earth Day Celebration, a fundraiser and education event organized by Arts2People.

Arts2People is requesting approval by the City to serve beer and/or unfortified wine at its special event and to allow for the consumption at this event. The Asheville Earth Day Celebration will be held on Saturday, April 19, 2008, from 10:00 a.m – 10:00 p.m. at Martin Luther King Jr. Park.

Pros:

- Allows for a fundraising opportunity for Arts2People, a non-profit organization

Con:

- Potential for public safety issues

No fiscal impact.

The Asheville Parks, Recreation and Cultural Arts Department recommend City Council to approve a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Asheville Earth Day Celebration on Saturday, April 19, 2008 from 10:00 a.m. – 10:00 p.m. at Martin Luther King Jr. Park.

Councilman Newman moved for the adoption of Resolution No. 08-81. This motion was seconded by Councilwoman Jones and carried on a 5-1 vote, with Mayor Bellamy voting "no."

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III. PRESENTATIONS & REPORTS:

A. PRESENTATION FROM SISTER CITIES FROM TRIP TO VALLADOLID, MEXICO

Mr. Charles Worley, Asheville Sister Cities International (ASCI) President, gave an overview of the recent successes with the Sister Cities Program: (1) Saumur – student exchanges and visit; (2) San Cristobal's water project with Rotary; (3) Vladikavkaz – Open World Program; (4) Nigeria – Rotary GSE team visit; and (5) Karpenisi, Greece – Evrytanian Convention to be in Asheville on June 14, 2008.

Ms. Gwen Hughes explained how the Asheville Sister Cities Program works and how Sister Cities are found.

She commented on the recent delegation visit to Valladolid, Mexico. She said that 32 delegates traveled to Valladolid with ASCI members, which included 4 students and 11 staff members from A-B Technical Community College with President Betty Young; 3 staff members from Mars Hill College with Dr. Nina Pollard; and 1 staff member from Warren Wilson College; Chief Financial Officer Larry Modlin, a representative from LEAF; and Sid Heilbraun. We were especially honored to have Mayor Terry Bellamy join the team for two days.

Ms. Hughes explained some of the Sister Cities successes, which included: (1) Mars Hill came home with a tentative agreement to begin work on an agreement to begin exchanges; (2) Warren Wilson made a presentation to the new school – UNO and hope to have future discussions; (3) Mayor Bellamy and Presidente Peniche discussed similar concerns in each city and agreed to share information on projects of mutual interest; (4) Five wheelchairs were delivered from ASCI and the Wheelchair Foundation to Presidente Peniche; (5) LEAF representative Sid Heilbraun met with the Maya children forming a band that will be sponsored by ASCI and LEAF; (6) school supplies were delivered to Dzitnup School; and (7) Tom Jones, Carroll and Gwen Hughes met with independent businessmen's group, Coparmex, who have offered assistance to ASCI and will be visiting Asheville in the fall.

Ms. Betty Young, A-B Technical Community College President, explained the A-B Technical College's success in that they came home with a 5-year plan and agreement to exchange students and staff.

Mr. Worley said that the following are impacts on our community and that our or sister cities: (1) opportunities for students and staff of our colleges for exchanges and long term learning events; (2) developing awareness of the world outside Asheville and the United States; (3) economic benefit to our community as visitors come; (4) awareness of the diversity of our own community; and (5) develop friendships that serve as instruments for world peace.

He said that that it is ASCI's wish to be the International Relations Arm of the City of Asheville – to be involved when a visiting dignitary arrives, to assist the City in any way in this area. It is also our wish that each of you travel to one of our sister cities with a delegation, and also be a part of activities when we have an incoming delegation.

Councilwoman Cape spoke about how her Sister Cities trip has aided her conversations on a regional basis. She explained the tremendous amount of information she obtained that can be useful in Asheville

Mayor Bellamy thanked the Sister Cities delegation for representing the City of Asheville.

B. PRITCHARD PARK COMMITTEE RECOMMENDATIONS

Ms. Stephanie Monson, Economic Development Planner, introduced Mr. Adam Pittman, Chair of the Pritchard Park Task Force, who said that the Pritchard Park Committee members have completed their task and now ask Council to review the findings of their results; the committee further asks Council to consider support for the community-driven Pritchard Park Cultural Arts Program, which should be considered a product of this year-long process.

Mr. Pittman explained that the Pritchard Park Committee, created by Council at their April 10, 2007, regular meeting, was charged by the Mayor on July 26, 2007, with the following tasks: Conduct focus groups on park programming with key Pritchard Park stakeholders; present the focus group results and recommendations for community programming to Council.

He said the Pritchard Park Committee members met regularly over the last year, researching and sharing items including but not limited to: data on the park's usage; current permitting regulations; and parks and programming best practices. The best practices research was focused on what are known as "special use" parks (parks not considered solely neighborhood use), and parks located in an urban/downtown situation. Staff members from both the Parks and Recreation Department and the Economic Development Division assisted the Committee. Members and staff also executed two stakeholder focus groups, and performed outreach to the Downtown Association and the Downtown Area Residents Network.

Mr. Pittman explained that the action requested is a commitment to match community fundraising in an initial minimum amount of $10,000.

Ms. Kitty Love, member of the Pritchard Park Committee, said that some members of the Committee are founders of the newly-formed group Friends of Pritchard Park. She then explained their program proposal called "The Pritchard Parks Cultural Arts Program" in detail. The program was developed in collaboration with staff, ensuring that any proposed changes to current practices, especially for permitting Outdoor Special Events, would be feasible. In general, the Committee proposes using a non profit "Friends of" group to fundraise for the program; to fully develop the program's parameters using information gleaned form the Pritchard Park Committee process; and to hire a professional arts administrator to activate and promote diverse and regular programming in the park. The first two items are well underway; the third item would come later in the process. She said that the Pritchard Park Cultural Arts Program is a community-driven programming initiative that will change the way people interact with the Park. Some operational highlights include (1) instead of asking Asheville's incredibly talent artists to pay to reserve the space, artists will now get paid to perform; (2) Asheville's Parks & Recreation Department will help market the performances inside the Park via the ranger kiosk, and in other public venues when possible; (3) cultural arts sessions will be featured in the Park twice a day on weekdays and for one long session during the weekend; and (4) a professional arts administrator will be contracted to run the program for the Friends of Pritchard Park.

She explained that the Friends of Pritchard Park believe there is an enormous opportunity to have a positive economic, cultural, and social impact on the lives of Asheville's

citizens through the regular celebration and sharing of cultural arts in a public space - Pritchard Park.

Ms. Monson said that while the Pritchard Park Committee is asking Council to consider allocating $10,000 in the Parks and Recreation Department budget for this program, it should be noted to Council that, even in the first year, one-half to two-thirds of the proposed program's funding is expected to come from community sources. At this time they have raised $15,000. The Asheville Downtown Commission has adopted a resolution of support for the Committee's recommendations. The Committee and staff agree that for this program to be successful, it must be truly community driven. In future years, this program might be expected to be much more self –sustaining; in other words the City's financial participation in this program should be seen as seed money to support a pilot program.

Ms. Monson said that the dedication of these funds would support the following goals (There are eight goals in Council's plan; this proposal addresses five of them):

Community Building/Promoting Inclusive Decision-Making: Helps meet long term goal *"Continue to develop resources and tools for increasing citizen participation in city government"*; engaged community stakeholders in a Council-appointed committee to develop recommendations on a topic of community concern. This effort is expected to further developed collaborative efforts between citizens and their municipal government.

Critical Services & Infrastructure: Supporting and Enhancing Basic City Services: Helps meet short term goal of *"Enhance commitment to public safety and drug enforcement priorities through a coordinated, holistic approach"*; Asheville Police Officer was an ex-officio member of the Committee and helped develop recommendations with public safety in mind. Committee hopes that this programming proposal can be one part of a coordinated approach to eliminate the open-air drug market in Pritchard Park.

Economic Development: Supporting a Dynamic and Robust Asheville Economy with Balanced Growth: Helps meet goal of *"Support and implement the HUB plan:* Specifically this initiative leverages support for the Creativity Cluster and HUB goal fourteen which asks supporters *" To strengthen cultural development through orchestrated public, private, and non profit sector collaboration"*..

Growth, Development & Land Use: Maintaining a sustainable community through growth and development policies: Helps meet goal to *"Promote strategies that encourage sustainable, high-density infill growth;* Support of this program would align with current strategies, including Council support of the Downtown Master Plan, that promote the downtown as the social, cultural and economic heart of the area.

Sense of Place, Heritage & the Arts: Embracing Asheville's vibrancy, character and cultural heritage Helps meet goal for Council to *"Review and Implement Downtown Social Issues Task Force Recommendations"*; In addition to addressing "Sense of Place, et al" by leveraging HUB goal fourteen, staff notes that the creation of this committee at least partially stemmed from Council's review of the Revised Recommendations from the Social Issues Task Force in April of last year, and that these recommendations today have tried to address parts of all the original Social Issues Task Force topics, except for graffiti.

The expectation to commit up to a $10,000 match for community fundraising is unbudgeted. In order to budget the matching funds, an increase in funding could be allocated to the Fiscal Year 2008-09 budget for the Parks and Recreation Department. Alternatively, a budget amendment could be made to fund the match when and if the private funds are raised.

Staff recommends Council receive the report of the committee and provide policy direction on the programming and funding issues.

Throughout discussion, Ms. Monson, Ms. Love and Mr. Pittman responded to various questions/comments from Council, some being, but are not limited to: has this proposal been reviewed by the Recreation Advisory Board; and has a budget been created to see how the money will be distributed; will the Program have measurable benchmarks and if so, what will those benchmarks be.

Councilman Mumpower was supportive of the concept, but was not comfortable in supporting the Program with taxpayer dollars especially when those dollars are not being considered in the normal budget process.

Councilman Newman was pleased to see some positive changes in Pritchard Park and hoped the trends continue. However, the City has a tough budget year and he struggles with supporting a new program. He could support the Program but does not want it construed that the City will commit on a reoccurring basis. Even though this request is outside the normal budget process, the rationale is that they are interested in starting the program sooner than next fiscal year.

Vice-Mayor Davis agreed with Councilman Newman and spoke in support of the concept of the Program. Due to the City's efforts regarding behavior in the Park, the calls for public safety are less and he felt that funding of this Program will make the Park even more usable. He felt the City should track the Program as remaining questions surrounding the behavior in the Park, the feeding of people when there are no sanitation facilities, etc.

Councilman Newman moved to support the recommendations of the Pritchard Park Committee and directed the City Manager to bring back to Council a budget amendment in the amount of $7,500. This motion was seconded by Vice-Mayor Davis.

Mayor Bellamy felt it would be prudent to have a detailed budget on exactly what the Program will cost and how the money will be spent. She supported the recommendations of the Committee, but could not support the budget amendment at this time without seeing a detailed budget. She felt that after a detailed budget is presented (including what the City's portion would be in that cost), then Council could determine the amount, if any, for the budget amendment.

Councilwoman Jones would like to see the total budget and what would be programmed from May 19 - October. In response, Ms. Monson asked if Council wanted to see a total budget if the Program were to be fully funded from May - October. Because, she clarified that if the Program does not get a certain amount of money, the Program may only run from May - September. The Committee is not promising Council that they will have the Program through October. They are promising that perhaps May - July is what they were using their community dollars on and they were expecting money from the City from July - October, possibly.

After a brief discussion regarding the need to see a detailed budget, Councilman Newman withdrew his motion and Vice-Mayor Davis withdrew his second.

With the intent of supporting this Program, Councilman Newman then moved to ask staff to come back with a budget for the Program describing how the programming will be implemented (including the City's direct and indirect costs), along with a budget amendment (funding to be determined after Council sees the programming budget). This motion was seconded by Vice-Mayor Davis.

When Councilwoman Cape was concerned that we may be sending a message that might affect their private fundraising, Ms. Love said she didn't feel a two-week delay will affect their efforts.

Mr. Pittman explained that the $10,000 request from the City is very reasonable. He urged Council support the Program with the $10,000 noting that people have donated funds with that City contribution in mind.

Mr. Larry Holt, 21 Haywood Street, urged Council to support this pilot program.

Ms. Susan Griffin, 61 Church Street, urged Council to show their support financially in that arts programming relay does revitalize parks.

Upon inquiry of Mayor Bellamy, City Manager Jackson said that he will have the information prepared for Council's April 22, 2008, meeting.

The motion made by Councilman Newman and seconded by Vice-Mayor Davis carried on a 5-1 vote, with Councilman Mumpower voting "no."

C. WATER SYSTEM UPDATE

Ms. Leslie Carreiro, Water Production Superintendent, said that the purpose of this staff report is to seek City Council direction regarding management policies related to the City's drought management and flood management plans.

The City of Asheville uses a computerized model to help predict future lake levels at the North Fork Reservoir. The model takes into account current lake level data, forecasted precipitation and other factors to implement necessary water management practices. The water system uses this data to establish responses to drought conditions, including conservation measures for all customers, based on the City's drought management plan. Asheville also uses the same computerized modeling for its flood management plan, which was established to maximize water shortage capacity at the North Fork Reservoir to minimize downstream flood damage during a major rain event including tropical storms and hurricanes.

In October 2007, the City of Asheville Water Resources Department requested voluntary water conservation measures from customers pursuant to the City's data modeling and drought management plan. As a result, the water system experienced an immediate decrease in consumption of 15-20 percent or approximately 2 million gallons of finished water a day. Since then, the impact of conservation along with increased precipitation in our watershed area has enabled the North Fork Reservoir to exceed its full pond capacity.

As of April 4, 2008, the current lake level was at 2601.6 feet, which is 0.23 feet above full pool. The modeling software shows the lake being full for the next ten weeks. The City's flood operations plan calls for the lake level to be maintained at 3.5 feet below the full bond stage beginning April 15 and during the spring and summer months. The plan requires the lake to be brought down to 5.5 feet as the tropical storm season occurs in late summer and early fall. This allows the department to react to rain events and lower the lake even more without having a negative impact downstream. If water usage continues at its current decreased levels, Asheville would be required to release water from the lake in the near future.

While the majority of North Carolina has been experiencing drought conditions, Governor Easley has asked for all water systems to call for conservation. Due to the conflict between Asheville's drought and flood management plans and the Governor's conservation initiative, staff contacted the N.C. Dept. of Environment and Natural Resources and the Governor's Drought Management Advisory Council to seek their direction. The State has advised Asheville to follow its local plans for operation.

Based on current conditions and future projections, the water system's management plans indicate that voluntary conservation measures should be lifted at this time.

If the request for conservation is lifted, City staff will continue to closely monitor consumption, precipitation, and lake levels daily to ensure proper management of the drought management plan while maintaining compliance with local policy.

Staff will also continue to monitor regional conditions concerning the drought and provide assistance to other communities whenever possible. The City provides water through interconnections to three local municipalities and one water district and provides emergency water through a connection with another municipality.

Pros:
- The City has active drought and flood management plans, which have been consistent through the drought.
- Projections through June 2008 show improvement of the drought conditions in our area.

Cons:
- Drought conditions continue in other areas of the State and Southeast, even with the recent volume of precipitation.
- Lifting the Voluntary Conservation request is in conflict with recent requests from the Governor's Office and localized conditions in other parts of the State.

The fiscal impact is decreased consumption is expected to reduce current fiscal year revenues by $705,629.

City staff recommends the City continue to follow its current Flood Operation and Drought Management Plans and lift the request for voluntary conservation.

Ms. Carreiro and Water Resources Director David Hanks responded to various questions/comments from Council, some being, but are not limited to: do we know the drought conditions in Weaverville or Black Mountain; should we be concerned if the voluntary conservation measures are lifted and everyone starts using more water as we go into dry months; how long does it take to lower North Fork by one foot in a reasonably crisis mode; how many feet did the hurricane events put into North Fork; has City staff looked at all the different conservation mandates from Governor Easley's Office; and is there a realistic chance that the State of North Carolina will mandate Asheville to deliver water to other communities.

Councilwoman Cape was interested in looking at some other initiatives from Governor Easley. She suggested a worksession on the topic of conserving our water, the City's long-range planning model and whether or not we would like to participate in conservation pricings. She noted that our water asset is being looked at by others and wanted to be proactive in discussing how we manage the water system and/or participate in the larger conservation and what that looks like for us as a community.

Councilman Newman noted that the Finance Committee has asked City staff to look into conservation rate structures.

In response to Councilwoman Cape, Mr. Hanks said that we will soon be in the final stages of our new Master Plan and it will address issues raised. He will be bringing a report back to Council in the near future.

It was the consensus of the majority of Council for the City to continue to follow its current Flood Operation and Drought Management Plans and lift the request for voluntary conservation.

Closed Session

At 7:11 p.m., Councilman Mumpower moved to go into closed session for the following reason: (1) To consult with an attorney employed by the City about matters with respect to which

the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: Louise Pack Metcalf, Barbara Pack Holcombe, Michael Lawrence, Black Dog Realty, LLC, and Buncombe County. The statutory authorization is contained in G.S. 143-318.11(a) (3); and (2) To establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of contracts for the acquisition of real property on Hunt Hill by purchase, option, exchange or lease. The statutory authority is contained in G.S. 143-318.11(a)(5). This motion was seconded by Councilwoman Jones and carried unanimously.

At 7:30 p.m., Mayor Bellamy recessed the closed motion to return to the formal meeting, noting that the closed session would continue at the end of the formal meeting.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE ADOPTION OF AN ORDINANCE DESIGNATING THE PROPERTY KNOWN AS THE HAMMOND-KNOWLTON HOUSE, LOCATED AT 30 KIMBERLY KNOLL, AS A LOCAL HISTORIC LANDMARK

ORDINANCE NO. 3602 – ORDINANCE DESIGNATING PROPERTY KNOWN AS THE HAMMOND-KNOWLTON HOUSE, LOCATED AT 30 KIMBERLY KNOLL, AS A LOCAL HISTORIC LANDMARK

Mayor Bellamy opened the public hearing at 7:30 p.m.

Ms. Stacy Merten, Director of the Historic Resources Commission, said that this is the consideration of an ordinance designating property known as the Hammond-Knowlton House, located at 30 Kimberly Knoll, as a local historic landmark. This public hearing was advertised on March 28 and April 4, 2008.

She said the Hammond-Knowlton House, with a period of significance from 1925-1957 is significant for its association with prominent Asheville architect William Waldo Dodge. The house features many examples on both the interior and exterior, showcasing Dodge's design ability as an architect as well as his work as a wood and metal craftsman and exemplifies the close connection between design, art & craft in the work of Dodge who was noted for his skill not only in architectural design but in the artisan details of those designs.

The Hammond-Knowlton House is also significant architecturally as a highly intact example of a Tudor Revival building from the 1920's. The house was designed in true Tudor style, with load-bearing posts and beams, rather than the common practice of half-timbering that was not structural in nature. The Hammond-Knowlton House, built in 1925, is a highly intact 2 ½ story Tudor Revival, with the only change being an addition made soon after the structure was built, which was the extension of a room at the southwest corner of the house.

The ordinance designates the Hammond-Knowlton House as a local historic landmark. The designation includes the entire interior and exterior of the house, the garage, the historic landscape features, including the stone walls and step and the 1.47 acre lot on which these structures are located.

When a property is designated as a local historic landmark, restrictions are placed on the property, and any modification to the land or structure must receive a Certificate of Appropriateness from the Historic Resources Commission of Asheville and Buncombe County. All improvements must follow the Secretary of the Interior's Standards for Rehabilitation and Illustrated Guidelines for Rehabilitating Historic Buildings. It is important that properties of local significance are preserved and protected for cultural, historic, and economic reasons and for the benefit of future generations.

Designation of this site as a local historic landmark makes the property owner eligible for a 50% reduction in local property taxes. Currently the tax appraisal for the property included in the proposed designation is $489,400. If the property is designated as a local landmark the potential tax savings for the property owner, including city, county and school taxes would be $2,679.46 per year.

Based upon the foregoing, the Historic Resources Commission recommends that the Asheville City Council adopt an ordinance designating Hammond-Knowlton House, as a local historic landmark. Staff concurs with the recommendation of the HRC for this designation.

Pros:

- A significant property will be recognized for its contribution both architecturally and culturally to the history of the area and will be protected from inappropriate alterations.

Cons:

- The tax deferral will result in a loss of revenue to the city and county.

City staff recommended City Council adopt the ordinance designating the Hammond-Knowlton House as a local historic landmark.

Mayor Bellamy closed the public hearing at 7:36 p.m.

Ms. Merten responded to various questions/comments from Council, some being, but are not limited to: what are the pros and cons of designating a single property as historic; does Asheville has a problem with people tearing down homes of an historic nature; and is there any other way to recognize historic properties other than through this process.

Councilman Newman felt that this is a public policy that the City is providing a significant public subsidy (tax deferral) with no firm commitment of public benefit from the property owner. In addition, he was concerned that we have a community of rich and architectural treasures and if we rally to support this program there would be a large number of buildings that would quality, thus having a significant negative effect on our tax base. He struggled to determine if this program is something Asheville should be using to achieve its goals for preserving Asheville's historic fabric or if there are better ways to invest these public resources.

Vice-Mayor Davis felt that Councilman Newman had some valid concerns and felt these issues should be addressed.

Councilwoman Cape felt that the City should start calculating the tax incentives that we give for programs like this and have them available as part of the conversation regarding how the City contributes to the economic vitality of this community.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Cape moved for the adoption of Ordinance No. 3602. This motion was seconded by Councilwoman Jones and carried on a 4-2 vote, with Councilman Mumpower and Councilman Newman voting "no."

City Attorney Oast said that because of the 4-2 vote, this ordinance will need to come back to City Council at their next formal meeting for a second and final reading.

B. PUBLIC HEARING TO SOLICIT COMMENTS ON THE CITY'S CONSOLIDATED ANNUAL ACTION PLAN WHICH ALLOCATES COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME PROGRAM FUNDS TO SPECIFIC PROJECTS FOR FISCAL YEAR 2008

Mayor Bellamy opened the public hearing at 7:48 p.m.

Community Development Charlotte Caplan said that this is a public hearing to obtain citizen input on the Consolidated Action Plan for Fiscal Year 2008-09, which sets out the proposed use of federal Community Development Block Grant (CDBG) and HOME Investment Partnership Act (HOME) funds. This public hearing was advertised on March 23, 2008.

She reviewed with Council the 2007 Action Plan highlights. The City expects to have available $1,427,076 in CDBG funds (19 programs; wide variety of purposes; and all benefiting low income Asheville residents) and $1,366,938 in HOME funds (18 programs for affordable housing only in Buncombe, Henderson, Madison and Transylvania counties) in the fiscal year beginning July 1, 2008. The City's Housing and Community Development Committee has made recommendations for the use of CDBG funds, which must be used in housing or community development programs in Asheville, and the Asheville Regional Housing Consortium has recommended uses for the HOME funds, which must be used for housing programs within the four-county Consortium area (Buncombe, Henderson, Madison, and Transylvania counties). A total of 37 programs are recommended for funding. Allocations are consistent with the Strategic Housing & Community Plan for 2005-2010.

If approved, the HOME funds and some CDBG funds will assist 206 housing units Consortium-wide. CDBG funds will also benefit more than 5800 low-income City residents through homeless services, housing counseling, small business assistance, and other needed services. Our partner agencies will contribute over $9,000,000 of other funding to these programs, leveraging $3.23 for every $1 of HOME and CDBG funds.

A summary of the draft Action Plan and notice of this public hearing was published on March 23. A 30-day comment period is required. At the end of this period, staff will ask Council to take action to approve the plan on April 22. The plan is due to be submitted to HUD by May 12.

There is no fiscal impact at this time. This is an allocation of existing resources.

Mayor Bellamy closed the public hearing at 7:50 p.m.

Mayor Bellamy said that formal action to approve the plan will be held on April 22, 2008, meeting.

C. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING FOR THE PROJECT KNOWN AS CAREFREE ASHEVILLE LOCATED ON HENDERSONVILLE ROAD, FROM HIGHWAY BUSINESS DISTRICT, OFFICE BUSINESS DISTRICT, AND RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/CONDITIONAL ZONING FOR A MULTI- AND SINGLE-FAMILY RESIDENTIAL DEVELOPMENT OF 144 UNITS, WITH MODIFICATIONS FOR FRONT SETBACKS THROUGHOUT THE DEVELOPMENT, HEIGHT FOR THREE MULTI-FAMILY BUILDINGS, AND REAR SETBACKS FOR TWO MULTI-FAMILY BUILDINGS

ORDINANCE NO. 3603 - ORDINANCE TO CONDITIONALLY ZONE THE PROJECT KNOWN AS CAREFREE ASHEVILLE LOCATED ON HENDERSONVILLE ROAD, FROM HIGHWAY BUSINESS DISTRICT, OFFICE BUSINESS DISTRICT, AND RM-6 RESIDENTIAL MULTI-FAMILY LOW

DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/CONDITIONAL ZONING FOR A MULTI- AND SINGLE-FAMILY RESIDENTIAL DEVELOPMENT OF 144 UNITS

Mayor Bellamy opened the public hearing at 7:50 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to conditionally zone the project known as Carefree Asheville, located on Hendersonville Road, from Highway Business District, Office Business District and RM-6 Residential Multi-Family Low Density District to RM-16 Residential Multi-Family High Density District/Conditional Zoning for a multi- and single-family residential development. In addition, the developer is requesting modifications for front setbacks throughout the development, height for three multi-family buildings and rear setbacks for two multi-family buildings. This public hearing was advertised on March 28 and April 4, 2008.

Ms. Cogburn oriented the Commission to the site location and said that the subject property, 12.21 acres, is located within the city limits, off of Hendersonville Road, just south of Walden Ridge Road. The property currently contains a single-family home and the infrastructure for what was designed to be an office/residential subdivision. Properties to the north contain office buildings and those to the east (along Hendersonville Road) contain commercial operations. To the west and south are single family homes although the zoning to the south is largely Office Business. The property itself is zoned HB (Highway Business), OB (Office Business) and RM-6 (Residential, Multi-Family Low Density District).

The applicant has received a variance from the City of Asheville's Board of Adjustment to the extent of grading allowed in the upper portion of the property which is in Zone B of the steep slope regulations. They are proposing less grading than would have been done under the previously approved project for this site (under the previous steep slope ordinance) but more than would be allowed under the new code. Based on the amount of grading already done on the site, very little grading could be done, under the new regulations, under any development proposal. The Board of Adjustment recognized this and also the sensitivity of the proposed design to the topography, in granting the variance.

The applicant is also seeking a modification for the height of the three buildings closest to Hendersonville Road (multi-family buildings). The allowable height in RM16 is 40 feet. They are showing heights of 44, 44, and 50 feet. These buildings are adjoining Highway Business zoned property which has an allowable height of 60 feet. Staff is supportive of this request.

The applicant is also requesting a modification to all front setbacks throughout the project in an effort to reduce grading impacts. Additionally, rear setback modifications are requested for Buildings A and C (a sixteen foot modification). Staff is supportive of these recommendations as well, feeling they display efficient use of the site as it has been developed thus far.

The subject property, 12.21 acres, is located within the city limits, off of Hendersonville Road, just south of Walden Ridge Road. The property currently contains a single-family home and the infrastructure for what was designed to be an office/residential subdivision. Properties to the north contain office buildings and those to the east (along Hendersonville Road) contain commercial operations. To the west and south are single family homes although the zoning to the south is largely Office Business. The property itself is zoned HB (Highway Business), OB (Office Business) and RM6 (Residential, Multi-Family Low Density District).

The property in question was approved for a residential and office subdivision in 2005-06. Significant grading and development have already taken place on site since that time. Most utilities are in place and the curbing and road are completed. The project was abandoned last year following the death of the developer and the property was placed on the market. CGR Asheville, LLC is interested in developing this property, working with the existing infrastructure.

The applicant, CGR Asheville, LLC, is requesting conditional zoning of property located off of Hendersonville Road. The previous address for the property was 1903 Hendersonville Road. The request is for conditional rezoning to RM-16 (Residential Multi-Family High Density District) to allow for the development of a 144-unit residential community.

The proposal for the community is a mix of single-family, duplex, quadraplex, townhouse, and multi-family dwellings. The total proposed residential density is 11.8 units per acre. Access to the property is off of Hendersonville Road. There is a small secondary exit and entrance road for emergency purposes. The roads are proposed to be public roads. The applicant is planning to maintain the existing road system (put in place for the original development) with one exception. They are planning to cut and remove the existing cul-de-sac to the south to better work with the slopes found in that area in the siting of building and parking. The existing home on the property will be removed once the initial buildings are constructed on the site.

The property is in an area protected under the City's steep slope regulations. The easternmost 6.37 acres is in Zone A of the regulations; the western 5.85 acres are in Zone B. Under the regulations, the allowable number of units in the Zone A portion is 85. In the Zone B portion, the allowable number of units is 33. The developer is proposing only 24 units in Zone B (as originally proposed for the previous development). The developer is proposing 120 units in Zone A and is requesting an exceptional development density bonus to allow the additional 35 units (a 41% bonus). They have provided a plan in their submittal which outlines the site features that qualify the project for this bonus. These include: walking trails, gardens, plazas and community gathering spaces, greenbuilding techniques, and an enhanced reforestation proposal for some of the most disturbed portions of the site as it currently exists. The applicant has committed to seeking certification for LEED for Homes, LEED for Neighborhood Development and NC Healthy Build Homes.

The project grading is also limited by the steep slope regulations. The applicant has received a variance from the City of Asheville's Board of Adjustment to the extent of grading allowed in the upper portion of the property which is in Zone B of the steep slope regulations. They are proposing less grading than would have been done under the previously approved project for this site (under the previous steep slope ordinance) but more than would be allowed under the new code. Based on the amount of grading already done on the site, very little grading could be done, under the new regulations, under any development proposal. The Board of Adjustment recognized this and also the sensitivity of the proposed design to the topography, in granting the variance. They are showing compliance with the new steep slope regulations concerning grading for Zone A.

The applicant is seeking modifications to the height of multi-family buildings A, B, and C (three buildings closes to Hendersonville Road - multi-family buildings). The allowable height in RM-16 is 40 feet. They are showing heights of 44, 44, and 50 feet. These buildings are adjoining Highways Business zoned property which has an allowable height of 60 feet. They are also requesting modifications to all front setbacks (to no setback in most cases) in an effort to reduce grading impacts. Additionally, rear setback modifications are requested for Buildings A and C (a sixteen foot modification). Staff is supportive of these modification requests as they feel they will display efficient use of the site as it has been developed thus far.

At a meeting on February 4, 2008, the City of Asheville Technical Review Committee (TRC) reviewed the conditional zoning request and made a positive recommendation (with conditions) that the project be forwarded to the Asheville Planning and Zoning Commission. The developer has resubmitted since that time, addressing the bulk of the conditions.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use

permits set out in Section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards

1. That the proposed use or development of the land will not materially endanger the public health or safety.

   The project, if approved, must meet all the technical standards set forth in the City's UDO and Standards and specifications manual. The developer has been working closely with City staff to ensure compliance.

2. That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.

   The developer has worked extensively in designing this project to work with the topography of the land as previously graded and developed. They are showing a design that is sensitive to the steeper sloped areas (little or no development and reforestation). Restricted by the amount of grading and development already done on the site, they are working to comply as much as possible with the City's steep slope regulations. They sought, and obtained, a variance for the grading of the Zone B portion of the site.

3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.

   The property could be developed with office and residential uses and the proposal is to develop a residential community. The greenbuilding, building design, and site amenities shown on the development plan depict a project that should not injure the value of adjoining properties.

4. That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

   The design of the project shows single-family homes and duplexes abutting the single-family neighborhood to the west of the site. The higher density housing will be located adjacent to property that is zoned and predominately used for office and commercial purposes.

5 That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.

   The proposed use supports the 2025 goals and Council vision as follows:
   a. Supports the goal of pursuing compatible infill development.
   b. Supports the goal of permitting and encouraging transit supportive density along and adjacent to major corridors and logical transit nodes.
   c. Supports the goal of promoting the use of green building techniques.
   d. Supports the goal of permitting more intense development in areas with appropriate infrastructure.
   e. Supports the goal of promoting high quality new development that complements and adds to the character of Asheville.
   f. Supports the long-term vision of promoting, high-density, infill growth.

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

The proposed use is located off of a major (five lane) thoroughfare in the City. Transit is available along this corridor. Much infrastructure is already in place for this project.

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

The developer has submitted a traffic study for the development that was analyzed by the City's Engineering Department.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable. Staff therefore recommends approval of this conditional zoning request and the requested modifications and density bonus. The TRC met to discuss this project on February 4, 2008, and recommended it to you with conditions as outlined in their report dated February 4, 2008.

This conditional zoning request was recommended for approval by a (7-0 vote) by the Planning and Zoning Commission. At the meeting, on March 5, 2008, no one spoke on this issue except for staff and members of the development team.

Pros:

- This project supports the City of Asheville's goal of pursuing compatible infill development.
- The project takes a property with significant infrastructure in place and proposes a sensitive residential development.
- The project will be designed to qualify for LEED certification.
- The project provides for a mix of housing types within a single community.

Con:

- The project is fairly dense and could be perceived by some to contribute to the high traffic on Hendersonville Road.

Staff recommends approval of this conditional zoning request and the requested modifications and density bonus. The TRC met to discuss this project on February 4, 2008, and recommended it to you with conditions as outlined in the TRC Report. This conditional zoning request was recommended for approval by a (7-0 vote) by the Planning and Zoning Commission.

Mr. W. Louis Bissette Jr., attorney representing CGR Asheville LLC, spoke in support of the project. He said their main problem has been in attempting to pick up the development of this project while working within the context of the existing site and the prior infrastructure development. He felt this is a unique mix of dwellings that will be a tremendous asset to the area. He explained why they are requesting the modifications and the exceptional development density bonus. A Traffic Impact Study was performed and the City's Traffic Engineer indicated that there was no significant impact on the traffic situation on Hendersonville Road by this project. He felt this is a very innovative project which will provide a broad range of housing opportunities for those people who choose to live there. Given the prior development activity, it has not been an easy task, but the development team is pleased with the design outcome and believes it will be an excellent addition to the community.

Ms. Suzanne Godsey, representing Siteworks Studios, spoke about the project in relation to the steep slope ordinance and existing grading vs. the proposed grading. She explained in detail the site plan and reasons for modifications.

Ms. Vivian Snyder, adjoining property owner, spoke in support of the project in that they are respecting their neighbors in the back of the property.

At 8:09 p.m., Mayor Bellamy closed the public hearing.

Councilwoman Cape initiated a brief discussion regarding the City's monitoring/review process when a project proposes to be LEED certified. Mayor Bellamy noted that the following language is in the proposed conditional use zoning ordinance and if the request is approved by Council, that language is what City staff has a responsibility to carry out: "it is proposed to be designed to qualify for LEED certification."

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Based on the above findings and the analysis provided in the staff report, Councilman Mumpower moved to adopt Ordinance No. 3603 to conditionally rezone the project identified as Carefree Asheville, located on Hendersonville Road from Highway Business District, Office Business District and RM-6 Residential Multi-Family Low Density District to RM-16 Residential Multi-Family High Density District/Conditional Zoning, with the modifications and density bonus requested, and subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; and (5) This project will undergo final review by the TRC prior to issuance of any required permits. This motion was seconded by Councilwoman Jones and carried unanimously.

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D. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING FOR THE PROJECT KNOWN AS FRANCINE DELANY SCHOOL FOR CHILDREN, LOCATED ON BREVARD ROAD, FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO INSTITUTIONAL DISTRICT/CONDITIONAL ZONING FOR A K-8TH GRADE SCHOOL, WITH MODIFICATIONS TO THE REQUIRED BUFFER

ORDINANCE NO. 3604 - ORDINANCE TO CONDITIONALLY ZONE THE PROJECT KNOWN AS FRANCINE DELANY SCHOOL FOR CHILDREN, LOCATED ON BREVARD ROAD, FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO INSTITUTIONAL DISTRICT/CONDITIONAL ZONING FOR A K-8TH GRADE SCHOOL

Mayor Bellamy opened the public hearing at 8:16 p.m.

Urban Planner Julia Cogburn said that this is consideration of an ordinance to conditionally zone the project identified as Francine Delany School for Children, located on Brevard Road, from RS-8 Residential Single-Family High Density District to Institutional District/Conditional Zoning for a K-8th grade school. This public hearing was advertised on March 28 and April 4, 2008.

Ms. Cogburn oriented the Commission to the site location and said that the applicant, the Francine Delany New School for Children, has requested the conditional zoning of three parcels located at 119 Brevard Road. The property, containing 3.87 acres, is currently zoned RS-8 (Single-Family High Density Residential). The school is currently located on the site, operating out of 6 modular classrooms and 2 administrative buildings (former homes on the site). About a third of the property, to the west, is heavily vegetated. The site is surrounded by properties that are zoned and used residentially.

The applicant is requesting rezoning to Institutional CZ (Conditional Zoning) in order to construct 5 new school buildings, new parking, and new play areas on the site. Four of the proposed buildings are one-story buildings with a height to the top of the building of 23'-3 1/8". There is 1 two-story building proposed which has a height to the top of the building of 34' 1/8". A new drive entrance is proposed which connects to three parking areas and provides for student drop-off. Two existing office buildings (former residential buildings) are proposed to remain and be used for administrative offices. New recreation areas for basketball, soccer, and play are also shown. Significant vegetation will remain at the rear (western) portion of the property.

The applicants are seeking a modification to allow for a 20 foot buffer on most sides of the property (Class A Buffer) and a 10 foot buffer on the southeastern corner of the property. When institutional zoning abuts residential zoning a 30 foot buffer is required. If the property was RS-8, which allows schools, there would be no requirement for a buffer.

The TRC met to discuss this project on February 18, 2008, and recommended it to you with conditions as outlined in their report dated February 18, 2008.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in Section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. That the proposed use or development of the land will not materially endanger the public health or safety.

   The applicant is not changing the use of the property. The site has been used for a K-8 school for over a decade, operating primarily out of modular classrooms. The project, if approved, must meet the technical standards set forth in the City's UDO and Standards and Specifications Manual. The existing site plan shows compliance with most of the City's development standards except those for which a modification is needed.

2. That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.

   Significant vegetation on the site is proposed to remain.

3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.

   The use of the land is not changing. Permanent structures and enhanced landscaping should improve the value of surrounding properties.

4. That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

   The buildings proposed range are 2,463 and 4,926 square feet and all but one of the buildings are single-story. The school has been located at this site for over ten years and is appropriate for the area.

5. That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.

The construction of permanent structures for the Francine Delany School supports the strategy of allowing appropriately scaled non-residential uses serving neighborhoods to be located on appropriate sites within those neighborhoods. Having schools in neighborhoods promotes walking and biking to school.

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

The proposed use is located along a collector street (Brevard Road – NC191) and along Transit Route 9 of the City's Transit System. The project has received approval from the City's Technical Review Committee (TRC) concerning issues of water, fire, police protection, etc.

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

The use proposed is not changing. The new site layout should improve traffic in the area as it provides for a looped student drop-off driveway.

Pros:

- Permanent school structures and enhanced landscaping will be an improvement to the site.
- The looped student drop-off drive should improve school and area traffic.
- The site plan still maintains significant natural vegetation on site.
- The use of the property is not changing; the siting of buildings on the property is changing.

Con:

- None noted.

Based on the above findings and the analysis provided in the report, staff finds this request to the reasonable and recommends the approval of the conditional zoning request with the buffer modifications as requested and with the conditions set forth in the TRC report and the standard conditions.

At a meeting on March 5, 2008, the Asheville Planning and Zoning Commission recommended approval of this conditional zoning to the Asheville City Council (7-0). No one spoke in opposition to this request and there have been no calls/contacts on this matter.

Mr. Gerald Green, representing the developer, spoke in support of the project and noted that one of their goals was to limit the area of disturbance that was already disturbed by the existing school. They met with the neighboring property owners and received no negative comments. He explained the reason for the modification request is to preserve the trees in the back and minimize the site disturbance for the grading that would be required. He said that the new looped drive will provide a more fluid traffic movement for student drop-offs.

Mr. Brad Brock, President of the Board of Directors for the Francine Delany School for Children, spoke in total support of the project.

At 8:23 p.m., Mayor Bellamy closed the public hearing.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Based on the above findings and the analysis provided in the staff report, Councilwoman Jones moved to adopt Ordinance No. 3604, to conditionally zone the project identified as Francine Delany School for Children, located on Brevard Road, from RS-8 Residential Single-Family High Density District to Institutional District/Conditional Zoning , with the modifications recommended by staff, and subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; and (5) This project will undergo final review by the TRC prior to issuance of any required permits. This motion was seconded by Councilman Mumpower and carried unanimously.

ORDINANCE BOOK NO. 24 - PAGE 406

V. UNFINISHED BUSINESS:

A. CONSIDERATION OF A MOTION TO APPROVE $50,000 IN THE CURRENT BUDGET TO BE ENCUMBERED FOR THE 2008-09 CITY CONTRIBUTION TO THE ECONOMIC DEVELOPMENT COALITION

Economic Development Director Sam Powers said that this is the consideration of a motion by City Council to approve $50,000 in the current budget to be encumbered for the 2008-09 City contribution to the Economic Development Coalition.

At the February 19, 2008, City Council meeting, Council reviewed a request from the HUB Project and the Economic Development Coalition of Asheville/Buncombe County (EDC) for funding. The request was referred to the City Council Planning and Economic Development (PED) Committee.

At the March 12, 2008, PED Committee meeting, the committee continued discussion of the HUB and EDC funding requests. After discussion, the PED Committee made a motion to recommend the $50,000 in the current city budget for regional economic development be encumbered for the 2008-09 contribution to the EDC. The motion was approved unanimously.

Pros:

- Supports City Council's Strategic Goal in the Sustainability Focus Area: "Partner in regional economic development strategies including the HUB; consider full partnership in the Economic Development Coalition."

Con:

- This fully allocates Fiscal Year 2007-08 funds for regional economic development initiatives.

Funding for this item is included in the current city budget so a budget amendment would not be required.

Staff recommends City Council approval of the PED Committee recommendation to encumber $50,000 in the current budget for the City's 2008-09 contribution to the EDC, to be made in two payments, one payment in July 2008 and one payment January 2009.

Vice-Mayor Davis moved to approve $50,000 in the current budget to be encumbered for the 2008-09 City contribution to the Economic Development Coalition, to be made in two

payments, one payment in July 2008 and one payment January 2009. This motion was seconded by Councilwoman Cape.

Councilwoman Cape said that an economic development overview study, which is funded by Buncombe County through the HUB organization, is underway which is looking at all the economic development organizations in the community in terms of what their role is, how they engage with one another, how does the City actually contributes to the economic development (not just in direct dollars, but in-kind), etc. She felt that the study will be very beneficial to the City in that it will be helpful for us to determine how we want to participate in economic development.

Councilman Mumpower felt that the City supports economic development with significant funds in staff support and other efforts to uphold the community. He felt that we are looking at a serious deficit in the coming year, which may get worse.

Councilman Newman felt that this is an item that should be decided as part of our normal budget process since the funding will not be used in this current fiscal year. He also noted that there will be other economic development projects coming to Council to compete for economic development dollars.

Vice-Mayor Davis noted that City Council referred this issue to the PED Committee for review and recommendation and the PED Committee made a positive recommendation. He also noted that we had a net growth of jobs in the region in the past year of 5,200 jobs and part of that is largely due to the EDC. He noted that Asheville has had a voting seat on the EDC for a number of years without paying their fair share. He felt that this issue could be considered during the budget review process; however, at this time we are dealing with what Council committed to this fiscal year.

Councilwoman Cape removed her second for the motion in that she too felt it should be discussed as part of the upcoming budget process.

Councilman Davis' motion died for a lack of a second.

Mayor Bellamy agreed with Vice-Mayor Davis in that this item was sent to the PED Committee for review and was back on the formal agenda for action by Council. She said that when City Council agreed to take a seat on the EDC, they said they would commit $50,000. She suggested that if this item is again discussed that a final decision be forthcoming.

Councilwoman Jones did want to build a relationship with the Chamber; however, was uncomfortable with having to pay to have a seat at the table.

B. MOTION TO APPROVE THE FEDERAL LEGISLATIVE AGENDA

Councilman Newman moved to approve the following federal legislative items. This motion was seconded by Councilwoman Cape and carried on a 5-1 vote, with Councilman Mumpower voting "no":

- Senate Bill 1738 "Combating Child Exploitation Act of 2007" to improve the Internet Crimes Against Children Task Force to increase resources for regional computer forensic labs, and to make other improvements to increase the ability of law enforcement agencies to investigate and prosecute predators. (Mayor Bellamy)

- HR 1692 "The Fighting Gangs and Empowering Youth Act of 2007" which contains many things that focus on making sure that our youth have alternatives from gangs as well as increase penalties for gang activity. (Mayor Bellamy)

- Senate Bill 1745 "Departments of Commerce and Justice, Science, and Related Agencies Appropriations Act, 2008" for support of our Weed and Seed program that is funded under this Act. (Mayor Bellamy)

- "The Safe, Accountable, Flexible and Efficient Transportation Equity Act of 2003" (1) Sec. 9002 - extension of the highway-related taxes and trust fund; (2) Sec. 9003 - extension of tax benefits for alcohol fuels; (3) Sec. 9004 - private activity bonds for surface transportation infrastructure; and (4) Sec. 9005 - all alcohol fuel taxes transferred to highway trust fund. (Mayor Bellamy)

- PL 110-140 "The Clean Energy Act of 2007" (HR 6) to reduce our Nation's dependency on foreign oil by investing in clean, renewable, and alternative energy resources, promoting new emerging energy technologies, developing greater efficiency, and creating a Strategic Energy Efficiency and Renewables Reserve to invest in alternative energy. (Mayor Bellamy)

- S.1675 "Local Community Radio Act of 2007" to implement the recommendations of the Federal Communications Commission report to the Congress regarding low-power FM service, (Councilwoman Cape)

- S. 234 "Wireless Innovation Act" to make broadband available to unconnected neighborhoods and communities – especially rural and mountainous areas – by exploiting unused frequencies in the broadcast spectrum known as "white spaces." (Councilwoman Cape)

- Support to fund the expansion of the ERC broadband and fiber optic network in the region for education, medical and emergency service support. (Councilwoman Cape)

- Lend support to the Land of Sky Regional Council of Government request for funding for a Comprehensive Economic Development Strategy – Regional Growth Management Planning Initiative for Western North Carolina. (Councilwoman Cape)

- Support funding for energy efficiency and conservation block grants. (Councilwoman Cape)

- Continued prioritization of the completion of I-26 components through Asheville. (Councilman Mumpower)

- Accelerated use of Federal resources in local action on Asheville's drug distribution network. (Councilman Mumpower)

- Enthusiastic Federal enforcement of existing laws affecting illegal immigration in Asheville. (Councilman Mumpower)

Councilman Mumpower said that he did not support the motion as he felt there were some good legislative requests and some that he could not support.

VI. NEW BUSINESS:

A. NORTH CAROLINA 21ST CENTURY TRANSPORTATION COMMITTEE REPORT

Mayor Bellamy updated Council on the 21st Century Transportation Committee report. She was appointed to the Committee by Governor Easley and the purpose of the Committee is multi-fold. They have been looking at how to resolve North Carolina's transportation issues for this Century, looking at various components of the N.C. Dept. of Transportation (NCDOT). She explained the four committees developed to look at how to move forward. She is on the Inter-

Modal Committee which is looking at all kinds of interconnect activity between transit systems and communities. She said that one of the key issues important to our community is the I-26 Connector. As a committee they heard a report on the different connector projects and Asheville's is the last one to get off the ground. She noted that if Asheville does not get moving on this initiative this year, other communities are vying for the money. Two projects have already been put on the table that were not in the original group and they would love to have our funds. It is imperative for our community to move forward quickly on the I-26 Connector. Across the state, different cities are already looking at other transportation needs and we must look beyond the I-26 Connector for our transportation needs.

She noted that in September, Asheville will host the Committee which will give us the opportunity to highlight our key transportation priorities. At that time it would be good to talk about not only the I-26 Connector Project but other issues we would like to see, whether that is about transportation to Weaverville or Black Mountain, or how we can connect to Haywood County or Madison County. This meeting will be an opportunity to address congestion and growth in our community. She suggested working with the Land-of-Sky Regional Council to help arrange the meeting when the Committee comes to Asheville.

In response to Councilman Mumpower, it was the consensus of Council to instruct City Manager Jackson to provide Council with a once a month brief update on the status of the I-26 Connector re-design process.

B. RESOLUTION AUTHORIZING THE ASHEVILLE TOURISTS BASEBALL CLUB TO CHARGE $3 PER VEHICLE FOR PARKING IN CITY OF ASHEVILLE OWNED PARKING AREAS AT AND ADJACENT TO MCCORMICK FIELD

Mayor Bellamy announced that the Asheville Tourists Baseball Club has withdrawn this item from Council consideration.

VII. OTHER BUSINESS:

Mayor Bellamy announced an event sponsored by the Asheville Firefighters Association for the Paxton Mitchell family on April 12, 2008, from 3-6:00 p.m.

Councilwoman Jones urged the community to educate themselves about internet safety of children.

Councilman Newman was concerned about the high gas prices and urged the community to buy a bus pass from the Asheville Transit System, which is a good way to save money and improve the air quality in Asheville.

Councilwoman Cape urged the community, especially a member of a diverse community, to contact the Land-of-Sky Regional Council and participate in the regional-wide initiative for supporting our green infrastructure in our community.

Councilwoman Cape also commended the Chamber of Commerce in hosting a workplace summit.

The following claims were received by the City of Asheville during the period of March 14-27, 2008: Charles Vansickle (Water), Alfonso Socarras (Water), Antonia G. Zamudio (Police), PSNC (Water), Glenn Weatherly (Parking Services), AT&T (Water) and Angel Oriana (Transit). These claims have been referred to Asheville Claims Corporation for investigation.

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Joe McKinney, Director of the Land-of-Sky Regional Council, invited City Council to the Environmental Protection Agency press conference on April 10, 2008, in that the City of Asheville will receive $400,000 to help with brownfields work along the riverfront.

Rev. Spencer Hardaway was concerned how to respond to a recent action of City Council regarding Mayor Bellamy being unseated as the Chair of the City Council Personnel Committee.

Closed Session

At 9:02 p.m., Councilman Mumpower moved to return to closed session. This motion was seconded by Councilwoman Jones and carried unanimously.

At 9:05 p.m., Councilman Mumpower moved to come out of closed session. This motion was seconded by Councilwoman Jones and carried unanimously.

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 9:05 p.m.

Magdalen Bowlson
CITY CLERK

Terry M Bellamy
MAYOR

Tuesday – April 15, 2008 - 3:00 p.m.

Worksession

Present: Mayor Terry M. Bellamy, Presiding (arrived in meeting at 3:49 p.m. due to a NC 21st Century Transportation Committee meeting); Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower (arrived in meeting at 5:11 p.m. due to a prior engagement); Councilman Brownie W. Newman; Councilman William A. Russell Jr.; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

BUDGET PREVIEW

Chief Financial Officer Ben Durant said that this is an update on the current year budget and a preview of the Fiscal Year 2008-09 budget.

He said that staff will be presenting City Council with the 3rd Quarter Financial Report on May 13, 2008. The Fiscal Year 2008-09 Manager's Recommended Budget will also be formally presented to Council at the May 13th meeting.

He then provided Council with a brief update on current year budget trends as of the end of February 2008, including an update on projected fund balance. He also provided a preview of the Fiscal Year 2008-09 budget.

He explained the current year trends, which include (1) Civic Center budget amendment; (2) rising labor/fuel costs for Transit; and (3) health care budget amendment. Regarding Fund Balance, the adopted budget Fund Balance percentage is 19.5%; the current budget is 16.9% and the Year End estimate is 18.9%.

He discussed the impact that the slowing economy has had on revenue growth. Using charts, he showed Council the basic revenue overview, property taxes revenue outlook, and sales taxes outlook (our growth estimate is 3.0% and the state-wide forecast is 1-2%. Other General Fund revenues include (1) Powell Bill (a) League of Municipalities forecast: down 6-7%; and (b) City Powell Bill estimate likely $175,000 too high; and (2) Investment Earnings (a) initial projection: 0% growth; and (b) interest have declined.

He then reviewed the following expenditure outlook - rising costs:

• Consumer Price Index (CPI):	4.6%
• Health insurance contribution:	$1.5 Million
• Full-Year funding for new positions:	$800,000
• Increased Transit subsidy:	$392,000*
• Fuel costs rising faster than CPI:	$328,000 (12.0%)
• Landfill tip fees:	$237,000
• 911 dispatch contract:	$119,000
• Criminal Justice Information System contract increase:	$165,000
• Construction costs exceeding CPI:	$63,000 (19.8%)

* assumes continuation of $248,000 subsidy from parking fund.

Budget balancing strategies include (1) revenue enhancement (a) increased cost recovery for Fire inspections; and (b) adjustment of fees for inflation; (2) personnel (a) maintain

competitive compensation package; (b) eliminate selected vacant positions; and (c) reliance on attrition savings (excluding Public Safety); (3) operating (a) departmental reductions/re-engineering; (b) reduce training/travel, professional services and small capital; (c) reduce Outside Agency funding; and (d) eliminate Manager's contingency; and (4) capital (a) reduce pay-as-you-go funding; (b) explore additional financing alternatives; and (c) use land sale revenue to fund major land purchases/capital.

He reviewed the budget preview of the multi-year outlook: (1) history indicates that Asheville's recovery from a cyclical economic slow-down won't be rapid; and (2) Some of Asheville's budget issues are structural: workforce issues; no differential water rates; grant revenue trends; sales tax distribution; tax base growth/annexation; age of infrastructure; and revaluation and tax rate implications. He briefed Council on the multi-year outlook of revenues and expenditures.

New resources are required to achieve the following strategic goals and action plans: tax relief; safest city; major capital improvements; sustainability and community development; and greenest city.

He concluded by saying that (1) structural issues compounded by cyclical economic trends; (2) actions necessary to address cyclical trends (a) avoid aggressive service expansion; (b) examine unfilled jobs (non-public safety); (c) reduce "controllable" operating costs; and (d) defer capital; and (3) actions necessary to address structural issues (a) CIP planning to include dedicated funding system; (b) identify specific funding options for safest city, greenest city, etc.; (c) set appropriate revaluation and tax rate policies; (d) pursue on-going re-engineering and innovation initiatives; and (e) identify core versus strategic services and set appropriate priorities.

Staff recommends that Council review the information on key budget trends and provide direction on the budget balancing strategies that staff is pursuing so that staff can complete work on the Fiscal Year 2008-09 Manager's Recommended Budget.

At 3:49 p.m., Mayor Bellamy arrived in the meeting.

Throughout discussion, Mr. Durant responded to various questions/comments from Council (noting that staff will provide additional detail when necessary or when requested). Some questions/comments are, but are not limited to: do we always compare our sales tax estimates with the State; have we calculated energy savings into the green initiatives that might offset those fees; request to see expanded conversations on what we might do to reduce our need for tipping fees; what percentage increase is for tipping fees; need to investigate an interlocal agreement with Buncombe County regarding tipping fees; what is the percentage increase for the CJIS program; is the CJIS Program beneficial to the City; what is the rationale of the 45%/55% (County) split for the CJIS Program; request for additional information in understanding the split rationale for the CJIS Program, especially since City residents already pay for part of the service through their payment of County taxes; and what percentage is the property in the City is tax exempt property.

City Manager Jackson said that staff has some recommendations regarding options regarding commercial garbage collection.

Regarding tax exempt property, Mayor Bellamy said that Raleigh has a lot of state-owned property and asked staff to look at what creative ways they are addressing their shortfalls. In looking at our multi-year picture, Council needs to look at our infrastructure which has been neglected in the past. As we continue to work on the issue of water, the on-going maintenance of our facilities must be addressed with something other than property taxes, e.g. partnering with the Tourism Development Authority, County or State.

CO-SPONSORSHIP EVENT SUPPORT

Ms. Diane Ruggiero, Superintendent of Cultural Arts, said that this is a review of the administrative procedure and funding of the City of Asheville co-sponsored event program.

The City of Asheville co-sponsors events that benefit local non profit organizations and enhance the community with public events, parades, and festivals. For 2008, the City's financial contribution to co-sponsored events is estimated at $245,500 of in-kind goods and services.

Going forward, the City of Asheville will issue a Request for Proposal (RFP) in the fall of each year for organizations and individuals wishing to apply for a co-sponsored event. The RFP clearly outlines the program criteria and expectations. Prior to the RFP deadline, the City of Asheville will conduct a series of workshops to assist potential applicants through the application process.

Staff will review the applications, followed by the Recreation Board who will evaluate, score and rank all applications and make the final recommendation to City Council. Events with a high ranking will receive co-sponsorship support up to the amount approved by the City Council. After each event, applicants receiving co-sponsorship will submit an event evaluation report which will be considered in the event they should apply for support in the future.

The City of Asheville is currently absorbing lost revenues and the costs of in-kind goods and services for the co-sponsor event program each year primarily in the areas of over time which has a significant impact on the City's operating budget each year. Council could plan for such cost by establishing an annual budget estimated at $150,000 to cover direct costs (overtime, vehicles, etc.) and lost revenue (permit fees, water, etc.). Council could provide additional funding, based on budget availability, to cover additional events.

Pros:

- Ensures co-sponsored events are aligned with the City's goals and vision;
- Allows the City to budget accordingly;
- Defines the process and the goals to the applicants;
- Provides better customer service through the RFP conferences;
- Controls the amount spent each year on co-sponsored events.

Cons:

- Potentially lowers the number of qualified applicants/events;
- Organizations will have to plan further in advance;
- Organizations will have more paperwork to complete.

Fiscal Impact: $150,000 from the general fund to cover direct cost (overtime, vehicles, etc.) and lost revenue (permit fees, water, etc.) which would represent a savings of $95,000 compared with previous year allocations upwards of $245,000.

The Asheville Parks, Recreation and Cultural Arts Department requests City Council to consider the administrative procedures and funding proposal for co-sponsored events in preparation for Fiscal Year 2008/09.

Councilwoman Cape stressed that the City's financial contribution to co-sponsored events contributes to economic development in this community.

In response to Councilwoman Jones, Ms. Ruggiero said that staff works with the applicants to help them identify areas to reduce the overall cost.

In response to Councilman Newman, Mr. Ruggiero said that staff will come back to Council with the list of outstanding events from August 1 - December 31, 2008, and suggest

those events be judged on the criteria established. If so, then staff will work with those outstanding events to expedite their application process, since that criteria was not established when they originally applied for co-sponsorship. Once Council determines the amount to budget for co-sponsorships for Fiscal Year 2008-09, they will reserve some money to account for the applications that they will get for events to be held in January-June, 2009.

Mayor Bellamy asked for a breakdown of this event information specifically what was originally proposed and what is proposed now (after looking where costs could be reduced). Also, as liaison to the Recreation Board, there was discussion about the City's relationship with the Bele Chere. Since City Council doesn't appoint the Bele Chere Board, discussion has been held about the Board possibly being a City-appointed Board, as we look for the need of more direct accountability for finances. She looked forward to that conversation coming back to Council. She also suggested the Recreation Board be more involved in the co-sponsorship review. In addition, regarding co-sponsorship, diversity is important and we need to keep in mind the various ethnic and elderly events so we have a broad spectrum of events.

City Manager Jackson said that regarding the Bele Chere Board, we have asked the consultant who is developing the Downtown Master Plan to look at all the advisory board structures for recreation. He will check on the status of that and report back to Council.

MERRIMON AVENUE ZONING STUDY UPDATE

Interim Planning & Development Director Shannon Tuch said that this report to City Council is a summary update of the April 2, 2008, community/stakeholder meeting for Merrimon Avenue.

In November of 2007, the Asheville City Council reviewed some recommendations from staff that differed somewhat from earlier recommendations promoting the creation of a new Mixed Use District; the change in recommendation came about as a result of new concerns raised by property and business owners along Merrimon Avenue. The Council asked staff to arrange another community/stakeholder meeting in an effort to identify some shared goals from all stakeholders. The stakeholders included representatives from both the residential community and the business community along with City staff representing the City's general interests. Attendance at the meeting included:

Merrimon Ave. Business Group: John Kledias, Eric Schaeffer, Scott Shealy, John Swann, Chuck Taft, Randy Jameson, Chris Peterson, Foster Shriner

Merrimon Ave. Study Group (residential community): Mike Lewis, Billie Buie, Hedy Fischer, Robbie Sweetser, Terri March, Susan Roderick

City Staff: Shannon Tuch, Alan Glines. Marsha Stickford

Topics of discussion and desired outcomes were shared with the participants ahead of time along with some background information and past reports and research. The meeting was facilitated by Ms. Kathy Marth of the Buncombe County mediation center who followed the "Participatory Decision Making Diamond Model" for the meeting. This model is designed to provide an appropriate level of background with an equal, yet focused, discussion of the pre-determined topics; the desired outcome is to identify common support and goals while also identifying conflicting goals or concerns. Ms. Marth was commendable in her efforts to keep the conversation focused; however, the result of the meeting was somewhat mixed with some participants growing frustrated with the topics of discussion and others frustrated at the perceived impasse and futility of working together for a shared vision. Nevertheless, the meeting did produce some information of value and is expressed below. The following format begins with stating the current staff recommendation and the respective groups' response to each.

Recommendation #1: Staff recommends the following to help address pedestrian comfort on Merrimon:

- Revise minimum sidewalk requirements to:
  - Widen the minimum width of a sidewalk from 5-feet to 6-feet
  - Maintain the minimum 5-foot planting strip - where possible, trees should be planted within the green planting strip and should meet the City's landscape requirements for planting strips (7-feet)
  - Eliminate the option for sidewalks to be located behind the curb
  - Eliminate fee-in-lieu option
- Continue to explore revenue options to bury power lines;
- Participate with site lighting focus group (recommendations to be presented separately);
- Re-initiate discussions with the N.C. Dept. of Transportation (NCDOT) regarding pedestrian enhancements on Merrimon (street trees & signalized crosswalks); and
- Create some incentives to private developers to include pedestrian-oriented site enhancements in their development proposals.

Response:

Business Group – Generally okay with the changes to sidewalk standards but did express some concern with the potential impact on available parking, particularly for small lots; would like to see some exceptions for small lots considered. They were unclear about the lighting issue. They supported the idea of providing incentives for pedestrian site enhancements (emphasis on non-mandatory requirements).

Study Group – Generally supportive of all the recommendations listed in #1; would like policy not allowing trees over water lines to be re-examined using certain species identified to not cause problems for water line infrastructure.

Recommendation #2: Staff recommends that flexibility to business and property owners be improved by:

- Incorporating incentives for a mixed-use product into the existing CB-I and CB-II zoning districts - these standards should be allowed for uses by right, as opposed to site-specific conditioned processes that must go before Council;
- Consider simplifying development standards by consolidating the CB-I and CB-II zoning districts with special care to improve non-conformities and incentives for preserving character defining structures; and
- Establish minimum setbacks that allow for efficient use of the property while preserving comfort and form.

Response:

Business Group – Supportive of a parallel set of standards that would encourage a mixed-use product; unsure how applying them as a USSR would work, may want to consider an overlay zoning or other product. Some concern over the size limitation recommended by staff (25K for single story, 45K for multi-story) as part of collapsing the CB districts together; also concerned over impact on drive-through windows but seemed generally supportive of allowing them provided they could meet certain requirements (hours of operation, stacking, placement, etc.). Appreciated the proposed standard that would maintain a minimum setback.

Study Group – Expressed concern over using the drive-through windows as an incentive; felt it was somewhat contrary to pedestrian enhancements. Also appreciated maintaining a minimum setback.

Recommendation #3: In order to effectively manage growth and development along the corridor, staff recommends the following:

- Existing development standards in the CB-I and CB-II districts remain largely unchanged while new opportunities are provided through a set of alternative development standards that guide development towards a mixed-use smart growth development pattern;
- Partnerships between the City and other stakeholders be explored to design and fund road and other infrastructure improvements; and
- Periodic analysis of development activity should be conducted and reviewed in context of the existing market, strategic goals, and current development standards – findings should be documented in a report.

Response:

Business Group – Some concern over the (unforeseen) impacts of collapsing the existing districts together but appreciated the intent of keeping the existing development opportunities unchanged; desire for stability, "don't want the rules to keep changing".

Study Group – Conceptually supportive of collapsing and simplifying the districts and developing incentive based alternatives for mixed-use, smart growth development; need more detail to respond in more depth.

The groups had also been asked to provide a list of issues that may not have been covered adequately in the recommendations. Meeting time did run out towards the end and no additional comments were offered by the Business Group; however, the Study Group did offer the following:

- Front doors should be placed on the street (perhaps as part of the alternative standards);
- Wanted method for calculating building height to be re-examined (had offered alternative in the past);
- Current recommendation does not address concern over potential for tall structures, particularly north of WT Weaver Blvd.;
- Concerns about the appropriateness of HB zoning for Merrimon;
- Would like possibility of 3-lanes for Merrimon to be considered (would provide space for bike lanes, street trees, sidewalks, on street parking, etc.);
- Reduce curb-cuts.

Pros:

- Provides new development opportunities not previously permitted
- Provides security/stability to existing development opportunities
- Simplifies the Unified Development Ordinance (UDO) (by reducing the number of zoning districts)

Cons:

- Community's tolerance for change may be exhausted (rezoning could be required)
- May result in a non-uniform development along the corridor for an extended period of time.

Fiscal Impact. From a memorandum from Public Works Director Mark Combs dated October 16, 2007, staff estimates costs to be $500 per linear foot for a total estimated cost of $10,803,200 for burying overhead utilities.

Despite the trouble experienced at the meeting, staff feels that the above listed items identify some common support for the staff's former recommendations and would encourage that Council explore a potential wording amendment establishing alternative standards for Merrimon, including the possibility of collapsing the CB-I and CB-II districts together. This should be done in context with an overall examination of the UDO and basic development standards.

Should Council desire to wait until such a time that a comprehensive examination and update of the UDO is undertaken, staff recommends that a minor wording amendment that removes the opportunity for a zero-foot setback on Merrimon Avenue be considered.

Because action on the Merrimon Avenue Zoning Study ties into the following topic of options for updating and streamlining the Unified Development Ordinance (UDO), Ms. Tuch then provided Council with her report on that issue.

She said that a considerable amount of Mayor and Council Member interest has been expressed regarding a comprehensive update and review of the UDO. For some time, Planning staff has been identifying areas of need and have incrementally been addressing a number of concerns through a series of wording amendments. Most recently, focus has been directed to the creation of new standards accommodating new practices and technology in addition to those amendments that address identified shortcomings (commonly referred to as "housekeeping amendments").

While staff is comfortable working towards resolving existing conflicts and shortcomings found in the UDO, the accumulated effect of many amendments over the last ten years has resulted in a less fluid and straightforward document. Additionally, the desire to accommodate many interests by incorporating a variety of exceptions and special circumstances into the code has resulted in a set of standards that are confusing and challenging to follow.

Asheville's UDO is described as predominately "Euclidian", also commonly known as "Traditional". In addition, it also contains certain districts that are more form based in nature (Neighborhood Corridor, Urban Village, Urban Place, etc.) resulting in a hybrid document. Interestingly, more municipalities continue to employ a traditional code while some have followed a similar path as Asheville, incorporating elements of a form based code. To date, more municipalities do not use a form based code; however, interest and popularity in form based code is growing.

At present, the City has initiated a master planning process for the downtown area which includes a series of information gathering sessions, public charettes, and other consensus building techniques to develop a shared vision for Asheville's downtown. Ultimately, this vision will be reflected in a series of recommendations and a set of form based development standards. A similar process could be employed for other parts of the City with the creation of a form based document to guide development in those areas. Another alternative could be the consideration of maintaining the existing traditional code with significant efforts at re-write and consolidation; this effort could include the development of many more illustrative examples to help demonstrate specific concepts or standards. Either option would benefit from some work to strengthen the integrity of the existing code in order to have a sound document from which to evolve.

The City Council's 2008'-09' Strategic Operating Plan included a commitment to sustainability and long-range planning. Having a clear, comprehensive and streamlined UDO is necessary for long range planning and maintaining sustainable development activity.

Pros:

- Create a simpler and easier to follow code
- De-emphasize land uses, allowing a market driven mix (viewed as a con by some)
- Emphasizes building form for more unified and consistent development pattern (viewed as a con by some)

Cons:

- Changes to development standards results in some uncertainty and instability (may have unintended consequences and could require correction)
- Process can be lengthy (12 to 18 months, depending on desired product and level of public involvement)

- Requires a strong public commitment
- Requires financial resources beyond standard budget for professional services

Fiscal Impact: Dependant on desired product and level of public involvement – consulting fees are estimate to be between $80,000 - $150,000. The potential cost of the professional service is unbudgeted.

City staff recommends City Council allow staff to focus on repairing the existing code, and postpone consideration of the consulting services until the financial outlook improves.

In response to Mayor Bellamy regarding whether the Merrimon Avenue zoning is a top priority, Ms. Tuch replied no and that most of the businesses or property stakeholders on the corridor didn't feel any particular urgency to pursue any changes or to pursue alternative development options, but it is a viable opportunity. One concern expressed over and over again in the meetings was change in zoning, regardless of whether the zoning is a good change.

In response to Mayor Bellamy, Ms. Tuch said that both sides wanted a minor wording amendment that removes the opportunity for a zero-foot setback on Merrimon Avenue. Since there has been some concern over the way we measure height, staff can look at that as well. She noted that staff can incrementally make some changes to the UDO but at some point they will need to do the larger zoning action.

Vice-Mayor Davis noted that the Merrimon Avenue study was not staff driven initially, but community driven. There was a group of concerned citizens that met with staff about development on Merrimon Avenue and that began the driving issue. He felt that collapsing the CB-I and CB-II districts would answer a lot of the developmental problems.

In response to Vice-Mayor Davis, Ms. Tuch said that it's possible for City staff to continue to work with the two groups.

Vice-Mayor Davis would support doing what we can to eliminate some of the immediate problems as we recognize the difficulties that the corridor provides

Councilwoman Cape supported moving forward with the three recommendations recommended by City staff. There has been a lot of good work done on both sides. She felt the recommendations offer quite a bit of flexibility and options for people.

Ms. Tuch said that the only thing staff presented was the conceptual idea of creating an alternative set of standards. If staff is directed to flush that out and actually create a draft of those standards, that would give people something to respond to in more detail.

Regarding form based codes, Councilwoman Cape said that another aspect of form based codes is how we write our Code so it's more readable and the charts are easier to understand. She supported that form. She suggested the City look to interns to help us tighten our Code.

Councilman Newman also supported the three staff recommendations. He felt that a lot of the issues, including form based codes, will be vetted to a certain extent through the Downtown Master Plan process. Regarding long-term dialogue, he was supportive of the City talking to Buncombe County and other people about regional planning issues.

Mayor Bellamy thanked the community for their time spent on this issue. She supported any minor wording amendments. Regarding a form based code, she wondered if a pilot project for a particular area of the City might be smoother, but felt that it would require a higher level of oversight than interns.

Councilwoman Cape said that most form based codes normally encompass a region, street or area. She hoped that we can investigate what the different coding options are in the future.

In response to Mayor Bellamy, Ms. Tuch felt staff can go back to the larger group to gage interest to working on a draft, understanding it is only a draft. She thinks we can succeed in collapsing the two districts together, creating some new standards and getting people to accept them, but it will take a lot of work to get there. That is her concern from a staff perspective, given all the other priorities as well as the context of the possibility that we may look at some larger scale changes to the UDO at a future date. She wouldn't want to spend so much time and energy on something and then turn around and do something very different with it in 18 months from now, if Council wants to do a whole scale change or update to the UDO (appearance, simplification, streamlining, etc.).

In response to Mayor Bellamy about direction, Ms. Tuch said that she will continue conversations with NCDOT and Progress Energy about utility lines. Regarding the sidewalk improvements, it's not the most difficult thing to achieve and that is the one element (although there was some concern from the business people about exactly how much that would impact them) in concept they supported. She does, however, need direction from Council about the development of the alternative standards and the simplification by collapsing those two districts together. That will require a zoning change and there are people in the community who are concerned about any kind of zoning change. That would require a commitment to try to educate those people and explore what the potential impact would be and try to mitigate that. Creating those alternative standards and the corresponding zoning change is the stumbling block.

Vice-Mayor Davis felt it was good to collapse the two districts, but the angst in going through that process is not something he would support now. He supported the wording amendment that removes the opportunity for a zero-foot setback on Merrimon Avenue.

After Ms. Tuch explained in detail the details of collapsing the two districts, Councilwoman Cape felt that since there is a lot of resistance to change, she would support slowing the process down and not proceeding with that issue at this time.

Ms. Tuch responded to Councilman Newman about the elimination of a zero-foot setback on Merrimon Avenue.

STORMWATER POLICY REPORT

Status Report on Current Ordinance

As a result of Councilman Newman's request on March 25, 2008, Director of Transportation and Engineering Cathy Ball said that the purpose of her presentation is to update Council on the effectiveness of the current stormwater ordinance.

On August 21, 2007, City Council adopted a revised Stormwater and Erosion Control Ordinance. This ordinance addressed a federal mandate to improve stormwater quality runoff from urban locations. It also created some tools to reduce sediment runoff from construction sites. Specifically, these tools include;

- Implement aquatic buffers;
- Mandatory weekly/bi-weekly inspections;
- Stricter fines and penalties; and,
- Additional staffing.

Aquatic Buffers

A thirty-foot aquatic buffer is required as part of the ordinance. This is the minimum width required by the state and federal government. The application of the buffer is stricter in the City's ordinance than in the federal and state laws. The federal and state laws do not require an aquatic buffer for projects that develop less than one acre. The City's ordinance requires an aquatic buffer for all new development and re-development projects that increase the value of the building more than fifty percent.

In hind-sight, we would recommend raising the threshold of the buffer requirement to a more manageable size development. In many cases staff is giving exceptions to projects less than 10,000 square feet of disturbed area because these sites cannot be constructed without intruding into the buffer area. We have found that the additional administrative review and the cost associated with this review do not justify the additional regulation.

Staff would recommend that the buffer requirement apply to a higher threshold of development. The change would be that all new development and redevelopment (>50% improvement of the building) that disturbs over 10,000 square feet.

Mandatory Inspections

The ordinance adopted last August requires that all development over 10,000 square feet of disturbed area provide weekly or bi-weekly inspections by an engineer or their representative. In general, staff has found this requirement to be helpful. We have continued to see resistance from developers. Their perception is that the cost outweighs the benefits. Staffs perception is that the engineer is an important part of the team, not just in the design phase but during the construction phase. Prior to this ordinance, the engineers typically, were only involved in the construction phase when a serious problem occurred.

Staff would recommend the change be that inspections can be performed by a certified professional.

Stricter Fines and Penalties

Staff feels strongly that the stricter fines and penalties have contributed to better construction and maintenance of erosion control measures. While it has not eliminated the problems, contractors are taking the installation and maintenance of erosion control measures very seriously. We have assed almost $72,000 in immediate fines since the ordinance was adopted. A summary of the immediate fines is as follows:

1. Grading without a permit 57
2. Grading in the buffer area 6
3. Off-site sediment damage 22

Of the 85 immediate fines we have issued, twenty-one (25%) have appealed to the Erosion Control Plan Review Committee. In all but two cases, the amount of these fines has been reduced due to extenuating circumstances. Some developers have raised concerns about the make up of the Erosion Control Plan Review Committee. This committee is chaired by the Public Works Director, with the Building Safety and Planning Director serving as the other two members. While this board may appear to be favorable to City staffs assessments, their record would indicate otherwise.

Beaucatcher Heights subdivision off Kenilworth Road has received the more fines than any other site with the total amount of the fines being $11,503 (all paid). She reviewed a spreadsheet with all of the fines the City has issued since August 2007.

In addition to the immediate fines, we have issued 47official Notices of Violation for various violations of the ordinance. These notices have resulted in better compliance with the ordinance.

Staff would recommend the change of the amount of immediate fine for grading in the buffer area - too high.

Staffing

In August, Council approved six additional staff members in the Stormwater Services Division to address the issue of enforcement and plan review. These additional positions consisted of three construction inspectors, two plan reviewers and one administrative staff. The plan review turn-around times have gone from an average of three to four weeks down to less than two weeks. The plan review process has been reengineered so that grading and stormwater permits are issued through the Development Services Center of the Building Safety Department. This insures that permits are not issued in error.

The addition of the construction inspectors has resulted in the streamlining of the inspection process. Staff reengineered the inspection process to move inspections for waterlines to the Water Resources Department. This allowed the construction inspectors to focus on stormwater and erosion control (site) inspections. One of the Construction Inspectors was promoted to oversee the violation process to make sure follow up inspections were performed. Since August we have performed over 3,000 site inspections, compared to approximately 1,700 for the pervious eight months. This is an increase of 77 percent since additional staff were approved.

At this time, 5:11 p.m., Councilman Mumpower arrived at the meeting.

In December 2007, we implemented twenty-four/seven on-call services for sediment and erosion control violations. Between the hours of 5:00 PM and 8:30 AM and on weekends, calls will be received by Daniels answering service at 828-258-4747. (During regular working hours, concerns can be reported at 828-259-5587. Since December 1, 2007 we have received five after-hours calls. We pay a Construction Inspector $50 per week to be on call.

Summary

In addition to meeting a federal and state mandate, the current ordinance has provided some tools to reduce sediment runoff from construction sites. The additional staff has streamlined the plan review and inspection process. Staff is working with the Watershed Policy Committee to make recommended some revisions to the Stormwater and Erosion Control Ordinance.

Better compliance with the Stormwater and Erosion Control Ordinance contributes to achievement of a strategic goal for the Natural and Built Environment. Additionally, it keeps our water clean, streets safer and neighbors happier.

Pros:

- In general, contractors are installing and maintaining stormwater and erosion control measures as a result of increased enforcement.
- Staff has more tools to ensure that off-site sediment does not occur.

Cons:

- Some minor tweaking of the ordinance could make it more effective and practical.
- The development community has expressed concerns over the make up of the Appeal Committee.

Fiscal Impact: None

The purpose of this presentation is to update Council on the effectiveness of the current stormwater ordinance.

Update from the Watershed Policy Committee

Director of Transportation and Engineering Cathy Ball updated Council on the work of the Watershed Policy Committee.

The Watershed Policy Committee was established as a stakeholder group to assist the staff in evaluating and making recommendations to the Planning and Zoning Commission and City Council on the Stormwater and Erosion Control ordinance. This group, in a limited capacity, assisted staff in the development of the Stormwater and Erosion Control Ordinance adopted by City Council on August 21, 2007.

Following the adoption of the Stormwater and Erosion Control Ordinance in August 2007, City Council directed staff to reestablish the Watershed Policy Committee. They directed staff to work with this Committee to readdress some areas of the ordinance, specifically the aquatic buffers, mandatory inspections and enforcement components. Council remanded the ordinance back to the Planning and Zoning Commission for review.

The membership of the Watershed Policy Committee was expanded in a somewhat open and informal manner.

The Watershed Policy Committee is charged with making strategic changes to the Stormwater and Erosion Control Ordinance to improve the Natural and Built Environment. Additionally, it keeps our water clean, streets safer and neighbors happier.

Pros:

- The expanded Watershed Policy Committee has reviewed the current ordinance and will be making more informed recommendations for improving the ordinance.
- Additional public input has been solicited as part of this process.

Cons:

- A large investment of time and resources has gone into the group process.
- The make up of the Watershed Policy Committee was open to anyone wishing to serve, therefore, did not have a balance of representation.

Fiscal Impact: None

The purpose of this presentation is to update Council on the work of the Watershed Policy Committee.

Mr. Marshall Taylor, a Professional Engineer with Brown and Caldwell who was hired to facilitate the group, said that the Watershed Policy Committee has met every two weeks for four hours each week since October 2007. They have held two public meetings with a third and final meeting scheduled for May 2008. They established five committees to evaluate the issues. These groups include the following:

- Aquatic buffers;
- Erosion control;
- Cost benefit analysis;
- Enforcement; and,
- Administration.

The City of Asheville was required to implement a Clean Water Act NPDES Phase II stormwater program. The program is required to provide public education and outreach; public involvement/participation; pollution prevention/good housekeeping; construction site controls; post-construction site controls; and illicit discharge elimination.

The mandate requires the City to establish the authority to regulate stormwater management controls covering (re)development during and after the construction phase and eliminating illicit discharges.

The Committee has held 11 committee meetings and two public information meetings. They have reached consensus on a number of technical revisions to the ordinance which remove unnecessary complications, facilitate administration, and avoid unintended consequences which could arise from the language in the ordinance.

To date, (1) a cost/benefit working group has proposed several ordinance changes which add flexibility to the requirements and reduce the compliance burden on property owners and developers, but maintain the program's effectiveness. It is likely that the recommendations will receive near consensus endorsement; and (2) continuing discussion about modifications to the aquatic buffer requirements hold some promise of recommended modifications that will be supported by a strong majority of the Committee. The recommendations address both the basic aquatic buffer requirements and the implementation of credits and incentives for going beyond the requirements and restoring aquatic buffers where they are not required.

The committee is scheduled to meet with the Planning and Zoning Commission on May 22, 2008. They will make formal recommendations to City Council in July 2008.

In terms of the riparian buffer policy, Councilman Newman asked if the Committee is only considering a one-size fits all standard, or are they also considering the idea of alternative standards based on growth management policies? For example, it may be appropriate to have a larger buffer in areas zoned for low-density development and to have a smaller buffer requirement in areas designated for high-density in-fill development. This would be consistent with other land use policies that recognize that some areas near the city center and along our commercial corridors are appropriate for more intense development while the areas zoned for lower density and residential purposes are generally less appropriate for intense development. Mr. Taylor responded that the Committee spent an awful lot of time on that issue. The recommendations to come back to Council will have multiple sizes, but they may not address specifically what Councilman Newman is talking about. He explained that there are limitations of a state mandated minimum.

Councilman Mumpower believed that the inflated environmental concerns have been used as an opportunity to intrude on other people's personal property rights and that is not appropriate.

Ms. Ball responded to Councilman Newman when he asked if her overall sense of the new ordinance is working as intended and whether we are seeing better erosion control measures on the ground.

Councilman Newman was pleased that staff and the Committee are identifying ways not to reduce the effectiveness of compliance, but finding less expensive ways to do it.

In response to Vice-Mayor Davis, Ms. Ball said that the Committee's cost/benefit team has proposed several ordinance changes which add flexibility to the requirements and reduce the compliance burden on property owners and developers, while maintaining the program's effectiveness.

In response to Vice-Mayor Davis, Ms. Ball said that she felt the most effective part of the ordinance is the initial failure fine. It sends the message to keep the erosion control measures in place. It seems harsh, but we are sending a message that your erosion control measures need to be a focus every day when you go to the construction site. Prior to this new ordinance, we did give grace for initial failure, but we did not see the kind of results that we are seeing now. She expected that the fines will drop over the next year because people will be doing a better job. She does, however, think the fines are too high on the buffer violations and recommended that the fine be lowered.

In response to Vice-Mayor Davis about the concern of the make up of the Erosion Control Plan Review Committee, Ms. Ball said that staff time for that Committee is pretty significant and they are open to the Watershed Policy Committee to make a recommendation. Vice-Mayor Davis would be open to exploring the possibility of an Appeals Board if that is the Committee's recommendation.

Closed Session

At 5:35 p.m., Councilman Mumpower moved to go into closed session for the following reason: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: Sofa Express, State of North Carolina, County of Buncombe and City of Asheville. The statutory authorization is contained in G.S. 143-318.11(a) (3). This motion was seconded by Councilwoman Cape and carried unanimously.

At 6:00 p.m., Councilman Mumpower moved to come out of closed session. This motion was seconded by Councilwoman Jones and carried unanimously.

CITY-OWNED LAND REQUEST FOR PROPOSAL PROCESS UPDATE

Economic Development Director Sam Powers reviewed with Council the Request for Proposals (RFP) for City-owned property.

He reviewed the following RFQ-RFP activities completed (March 2007 to present): (1) Stakeholder meetings: goals and objectives defined; (2) market opportunities/constraints; (3) Request for qualifications; (4) Council worksession: site specific goals and uses; (5) public open house; (6) RFQ for adjacent property owners; and (7) developer pre-qualification - Pre-RFP meetings with developers in November of 2007; RFP issued to pre-qualified developers in December of 2007; and proposals received and evaluated in March, 2008.

Regarding the developer Proposals – (1) received February 29, 2008 (a) Eagle-Market Street Property – One; (b) Haywood at Civic Center – One; and (c) Parks Maintenance Properties – None; and (2) evaluated March, 2008.

Next week goals will include (1) overview of proposals received; (2) next steps; and (3) Council direction.

Councilman Newman wondered if we may be undercutting the ability to work with people when we ask for market rates, especially since one of our goals is affordable housing. Mr. Powers said that when we structured the RFP we made it incumbent on the potential responders to tell us what incentives they might have to have in order to make the project work for them. In addition, he thought there is a legal expectation that the City has to sell their property at fair market value or work on a development agreement that would allow us to sell for less than fair market in exchange for public benefits. He also felt we've had a few changes in the market that are temporary in nature, maybe 18-24 months, and he believed the Park Maintenance site is probably one of the best sites we have available in the City to meet the goals of workforce housing.

Councilman Newman agreed that the Park Maintenance site is well suited for affordable housing. He felt we should be more clear about that, because the reality is that our permit fee waivers and our Housing Trust Fund are just not strong enough policy tools for a private developer to buy a piece of property at fair market value and do anything other than a really modest level of affordability. He felt we should be clear that we want to see the property be redeveloped and we are going to donate it to whoever has the best proposal with the greatest public benefits.

Councilwoman Cape felt that if we put City-owned property on the table, we can make strategic investments with someone. All of the properties we have offered have opportunities for strategic value to our community and the dollar amount for the property is of the least importance to her. She was disappointed that we only have a few to choose from and just because we are going through this process doesn't mean we are locked in if something doesn't meet our goals. She felt we may need input from the City Attorney on how we can structure conversation, other than just money for the property, around other things like encouraging economic development, workforce housing, etc.

Councilman Mumpower asked Mr. Powers to be prepared to address the following two questions next week when staff will be asking for Council direction on this issue: (1) how much money has been spent on this 2 year process; and (2) how many pieces of property did we start out with originally.

Councilman Newman hoped that the City continues to move forward. He did agree that it does cost some money to go through a process like this, but if we used a commercial realtor to sell them, there would be a 10% commission. He asked Mr. Powers to be prepared to advise Council what the alternative price would be for a real estate transaction like this.

Vice-Mayor Davis noted that the market has changed dramatically and he was fairly disappointed with that. He liked that we have a viable piece of not City-owned land in the Eagle-Market Street area He agreed with Councilwoman Cape in that unless we are able to achieve goals in this process, we are doing nothing more than selling land. He hoped that the two proposals will accomplish some of the goals we are looking for.

Vice-Mayor Davis asked what the next step would be if we find that the proposals submitted do not accomplish our goals. Mr. Powers responded that the next step would be a Council decision. The market has changed but we did receive two proposals that he thinks meets the requirements in terms of what we have outlined for evaluation. Council will need to decide if the proposals ultimately don't meet all or enough of the goals. The options would be to do the process again, wait until the Downtown Master Plan is complete, or just wait.

Mayor Bellamy read a portion of the November 21, 2006, City Council minutes where Council agreed that their goals and objectives would be "workforce housing, enhanced tax base, smart growth, realistic market opportunities, attract innovative developers, path to redevelopment over the next 2-4 years, focus City efforts to be result oriented, transparent process, best use of public assets, economic and environmentally sound, potential public space, involve local businesses, support City's Minority Business Plan, cost benefit of relocating municipal facilities, impact on taxpayers and promote the live/work/play downtown." Not having the actual proposals, it's hard to say whether we've met all these qualifications. She will reserve her comments until we actually see the proposals to say if they meet the original intent that was agreed upon.

STATE LEGISLATIVE AGENDA

City Attorney Oast said that this is the consideration of the City's legislative agenda for the 2008 "short" session of the N. C. General Assembly

The relevant deadlines for local bills are May 21, 2008, for submitting bills to the Legislative Services Office (bill drafting), and May 28, 2008, for introduction in either chamber. These deadlines are established by joint resolution.

1. Woodfin / Asheville Boundary. As noted in the March 18 Staff Report, HB 758 regarding the boundary between Asheville and Woodfin is a matter with respect to which action was not completed last year. We have refined the boundaries, had further discussions with Woodfin, and are in the process of contacting the relatively few property owners who will be affected by the reconfiguration.

2. Parking / Towing. Recent incidents suggest that previous measures taken to address the issue of non-consensual or "predatory" towing have not been as effective as hoped. Accordingly, we are:

   (a) Reviewing our current authorization to determine what else may be possible without further authorization from the State.

   (b) Proposing that the State broaden municipal authority to regulate this activity.

   As to (a), the general federal preemption has some exceptions that permit the states or local governments to adopt regulations related to safety and to rates charged for non-consensual tows. In North Carolina, a local government's ability to regulate business or commerce is derived from the State, and there are constitutional provisions that limit how much of this authority can be delegated to local governments. With respect to public safety, local governments have somewhat broader authority to regulate.

   Notwithstanding the limitations under State or federal law, local governments in North Carolina (including Asheville) and elsewhere have adopted ordinances regulating certain aspects of non-consensual towing. When these regulations have been challenged (and I have found no reported cases from North Carolina), the public safety exception has been recognized as a source of local authority.

   In 2004, the City of Raleigh adopted an ordinance that contained the following provisions:

   - Tow companies must notify the police within an hour of towing a vehicle.
   - Vehicle owners cannot be charged more than $100 for tows without consent from the city's police department.
   - Tow companies were mandated to move from a cash-only payment system to accepting credit / debit card(s).
   - Companies are required to be on call 24 hours a day to ensure a motorists' initial call is returned within 15 minutes and in a position to release the vehicle within 45 minutes of the call.
   - The owner is also afforded the right of removing personal property from the vehicle without charge.
   - The ordinance prohibits a company from towing a vehicle if its owner returns before the vehicle leaves the lot, with an early release fee not to exceed $50.
   - Failure to comply with one or more of these requirements results in a misdemeanor charge punishable by a $500 fine.

   In his view, these are aspects of non-consensual towing that bear some rational relation to public safety, especially in view of the information (anecdotal and otherwise) that we have received from people who have had this experience.

However, further review of the rate regulation provision is needed. An aspect not covered by Raleigh's ordinance but that may be relevant to Asheville is that there have been reports that the taxis called to transport persons to their towed vehicles appear to have some business connection with the tow truck operators. The City can and does regulate taxi fares, and this may affect Council's consideration of this aspect

At Council's direction we will further explore an ordinance that addresses the aspects of non-consensual towing summarized above, based on our current authorization to regulate in the interest of public safety.

As to (b), in view of the constitutional limitations on local acts regulating trade or commerce, Council may wish to explore with our local delegation or with the League of Municipalities the possibility of general legislation that would permit a broader degree of regulation of this activity. It seems like there are enough other cities where non-consensual towing is a recurring issue that there may be some support for such an effort.

Another issue that has potential for local legislation is to lower the threshold for us to place an immobilization device (boot) on cars that are illegally parked. The way it is right now, sometimes people accumulate a fairly hefty amount of fines before we can boot them. Then, after we do boot them and try to work out a payment plan, they frequently don't have the financial means to do that. What we want to do is to be able to attach the immobilization device earlier in the process and gain compliance that way.

3. Street Gang Prevention. Council has expressed a continuing interest in strengthening criminal laws related to gang activity. There were some bills introduced in 2007 that remain eligible for consideration this year, and Council may want to reinforce its support for them.

4. Salvia Divinorum. This is a substance that is sold in stores and online that is reported to have hallucinogenic properties. Salvia Divinorum is not on the schedule of controlled substances that the State regulates, and which forms the basis for criminal laws relating to drug use. Some states have or are considering dealing with this substance as a controlled substance. A very limited check has disclosed no such effort underway in North Carolina. Council may wish to monitor the legislative activity and take a position if and when information becomes available, or may encourage the General Assembly, through our local delegation, to initiate legislation.

5. Justice System Funding. As Council has learned from law enforcement officials, judges and prosecutors, the government's ability to prosecute criminal activity effectively is limited by funding for the justice system. Council has in the past encouraged increased funding for elements of the criminal justice system, both locally and on a State-wide basis. Council may renew its support for increased funding.

6. Mental Health Delivery. Similarly with respect to mental health delivery, local governments – especially regional centers like Asheville – experience the impact of State funding decisions in the form of local facilities closing down, or cutting back on services. Council in the past has expressed support for the funding of mental health programs locally and State-wide, and may want to renew that support.

7. Distribution of Video and Telecommunications Sales Tax to Local Governments. As Council may remember, a law was enacted in 2007 to essentially place the responsibility for cable franchising with the State. A related bill was introduced (SB 1068) that, among other things, would increase the amount of the State tax collected on these operations

that is distributed to local governments. The bill would also increase the amount of that tax allocated to local PEG channel support. If the League of Municipalities has not expressed a position on this, it probably will do so. Council may express its position on this bill now, or obtain more information and possibly join other local governments in appropriate action.

8. Smoking in Public Parks. Other communities, including Raleigh, would like the ability to prohibit this as well.

9. Incorporation. Recent activity in this area and elsewhere in the State to incorporate areas on the periphery of major cities has heightened awareness of the implications of such incorporations for planning and other purposes. Council may wish to express its concern in an official way, including asking the General Assembly to study this issue.

As always, we will monitor legislative bulletins and advise Council of items of interest. Additionally, we receive information from the League of Municipalities about matters of particular interest to N. C. cities, and will advise Council as to those matters as well. If Council members become aware of matters of interest in the legislature, please advise our office and we will be glad to obtain available information.

At Council's direction, he would prepare appropriate resolutions on any item, and will monitor with our delegation those items with respect to which bills have been introduced at our request.

The Asheville Chamber of Commerce is in the process of adopting its legislative program. As soon as it is available, a copy will be provided to Council. Council should review this and determine whether there are particular items that Council wishes to express its own position on.

This is for update/informational purposes; no action is needed at this time. He will bring a resolution forward for Council's consideration at the April 22, 2008, meeting.

Councilwoman Cape supported most of the issues, except for the Salvia Divinorum issue. She could not lend her support for this until she learns more about that drug. She also asked that the issue of raising the drop out rate from 16 to 18 years be added to the legislative agenda.

Councilman Newman asked an item be added to encourage support for Asheville to have the authority to conduct voluntary annexations for developments that connect to the City government as is the norm across the state.

Vice-Mayor Davis agreed with City Attorney Oast in that there is a lot that can be done locally regarding non-consensual towing.

Mayor Bellamy explained the following issues she requested to be added to the legislative agenda (1) Jessica's law (dealing with child predators); (2) support for the creation of a database of illegal guns (guns apprehended through a raid or confiscated during a process of arrest); (3) homestead exemption act for veterans with disabilities; (4) support for the School Board's resolution supporting to increase the drop out age from 16 to 18 years; and (5) identify theft of children (parents who use their children's name and social security numbers to get credit).

Councilman Mumpower responded to each of the issues voicing support, opposition or general questions.

COMMUNITY MEETINGS

Mayor Bellamy said that in 2006 City Council community meetings focused on our strategic plan and in 2007 Council's community meetings focused on specific issues, e.g., homelessness, Bele Chere, etc. This year, she plans for Council's community meetings to be arranged a meeting with the Town of Weaverville. The format will include the City Manager giving an overview of major issues in Asheville. She noted that Weaverville's Town Manager will do the same. At the meeting, other key issues like growth and development, annexation and water will also be discussed. She said the meeting will take place in the William F. Wolcott Jr. Public Works Facility, located at 161 South Charlotte Street, in Asheville and will be from 5:00 - 7:00 p.m. The meeting will be open to the community. She will make arrangements for other communities in the future.

Mayor Bellamy asked that City Manager Jackson provide Council with his draft overview prior to April 29, 2008.

It was the consensus of Council for the 2008 community meetings to follow Mayor Bellamy's format.

BOARD/COMMISSION APPOINTMENTS

Regarding the Citizens-Police Advisory Committee, Vice-Mayor Davis said that the City Council Public Safety Committee is in the process of re-energizing the Committee. However, it was the consensus of Council to interview Mr. Cesar Romero and instruct the City Clerk to re-advertise for the west representative another month.

It was the consensus of Council to interview Dorothy Herbert, Brad K. Brock, Beth Gillespie and Scott Taylor for vacancies on the Historic Resources Commission.

It was the consensus of Council to instruct the City Clerk to re-advertise for vacancies on the Recreation Board.

After a brief discussion of what constitutes a design professional, City Attorney Oast felt that a design professional is someone that possesses a license or certification to practice some aspect, like an engineer, planner or architect. He felt that a licensed contractor is not necessarily for design. It was the consensus of Council to (1) interview Mark Allison for a vacancy on the River District Design Review Committee; and (2) instruct the City Clerk to talk with Gregory Sills to see if he is licensed, and if so, to arrange an interview for him as well. Upon inquiry of Councilwoman Cape, Vice-Mayor Davis said that the Boards/Commissions Committee will look at the role of the River District Design Review Committee as we move forward in developing the River, with input from the Committee members and staff.

Councilwoman Cape advised Council that a vacancy has just occurred on the Sustainable Advisory Committee on Energy and the Environment Committee. Vice-Mayor Davis said that the Boards/Commissions Committee will review that when they meet.

ADJOURNMENT

Mayor Bellamy adjourned the meeting at 7:11 p.m.

Magdalen Bowlson
CITY CLERK

Terry M Bellamy
MAYOR

Tuesday – April 22, 2008 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; Councilman William A. Russell Jr.; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

The Evergreen Middle School's Science Olympiad Team led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Mumpower gave the invocation.

I. PROCLAMATIONS:

A. RECOGNITION OF THE EVERGREEN MIDDLE SCHOOL'S SCIENCE OLYMPIAD TEAM

Mayor Bellamy recognized the Evergreen Middle School's Science Olympiad Team. Each member explained the medals earned. Mr. Jason Carter, Middle School Math Teacher, then explained that the Science Olympiad's mission is to create a passion for learning science by supporting K-12 Science Olympiad tournaments at district, county, state and national levels. It has an emphasis on teamwork and a commitment to excellence. Evergreen's Science Olympiad team won first place in the Regional competition at UNCA on March 15. They triumphed over 12 middle schools from all over western North Carolina. The team earned medals in 15 events of which five were gold and won $5000 in college scholarships from UNCA. On April 5, the team traveled to NC State University in Raleigh and competed in the State Science Olympiad against 50 teams from all over North Carolina. They were the only team from western NC that placed in the top 20 (Evergreen was #20). The team was coached by Mr. Carter, Media Specialist Laura Branch and former Evergreen parent Bob Lawson.

Team Members recognized were Derek Masiello, Janyce Johnson, Ari Simmons, David Steinhoff, Gabriel Wagner, Julia Johnson, Patrick Truesdell, Henry Hines, Skye Nestler, Max Stark, Brendan Clements, and Lorax DeBuyser.

State Winners recognized were Derek Masiello and Lorax DeBuyser - 1st place in Mystery Architecture; Janyce Johnson and Julia Johnson - 7th place in Science Word; Janyce Johnson and Julia Johnson - 8th place in Scrambler; Derek Masiello and Emily Truesdell - 11th in Write It, Do It; Patrick Truesdell and David Steinhoff - 14th in Meteorology; and David Steinhoff and Gabriel Wagner - 15th in Science Crime Busters.

Mayor Bellamy was pleased to recognize the Evergreen Middle School as one of the top 10 greenest schools in the country.

B. PROCLAMATION PROCLAIMING MAY 2008 AS "MOTORCYCLE AWARENESS MONTH"

Councilman Mumpower read the proclamation proclaiming May 2008 as "Motorcycle Awareness Month" in the City of Asheville. He presented the proclamation to Mr. Roger Williams, who briefed City Council on some activities taking place during the month and some state and federal legislative actions they are working on regarding motorcycles.

C. PROCLAMATION PROCLAIMING MAY 5-11, 2008, AS "PUBLIC SERVICE RECOGNITION WEEK"

Mayor Bellamy read the proclamation proclaiming May 5-11, 2008, as "Public Service Recognition Week" in the City of Asheville. She recognized the following individuals representing their respective City departments: Bernard McDowell (Public Works), Marcia Hart (Civic Center), Lt. Joy Ponder (Fire), Woody Ledford (Transportation & Engineering), Tim Jennings (Administration), Terry Brown (Water Resources), Brendan Morgan (Police), Pat Ezell (Human Resources), Cheryl Heywood (Finance), Gary McDaniels (Planning & Development), John Kutscher (Parks & Recreation), Kathy Wilson (Information Technology), and David Souther (Building Safety).

D. PROCLAMATION PROCLAIMING MAY 2008 AS "SEAT BELT AWARENESS MONTH"

Vice-Mayor Davis read the proclamation proclaiming May 2008 as "Seat Belt Awareness Month" in the City of Asheville. He presented the proclamation to Police Chief Bill Hogan, who briefed City Council on some activities taking place during the month.

II. CONSENT AGENDA:

At the request of Councilwoman Cape, the minutes of the April 8, 2008, meeting were removed for amendment; and Consent Agenda "B" was removed for discussion and/or an individual vote.

At the request of Councilman Mumpower, Consent Agenda Items "C," "D" and "G" were removed from the Consent Agenda for discussion and/or individual votes.

A. APPROVAL OF THE MINUTES OF THE FORMA MEETING HELD ON APRIL 8, 2008, AND THE WORKSESSION HELD ON APRIL 15, 2008

The April 8, 2008, minutes were removed from the Consent Agenda for amendment.

B. RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE PROPERTY OFF HAZZARD STREET

This item was removed from the Consent Agenda for discussion and/or an individual vote.

C. RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT GRANT FUNDS UNDER THE N.C. OFFICE OF JUSTICE PROGRAMS OF THE DEPARTMENT OF JUSTICE TO MAKE TECHNOLOGY IMPROVEMENTS IN THE AREA OF POLICE RADIOS FOR THE ASHEVILLE POLICE DEPARTMENT

This item was removed from the Consent Agenda for discussion and/or an individual vote.

D. BUDGET AMENDMENT TO ACCEPT GRANT FUNDS UNDER THE N.C. OFFICE OF JUSTICE PROGRAMS OF THE DEPARTMENT OF JUSTICE TO

MAKE TECHNOLOGY IMPROVEMENTS IN THE AREA OF POLICE RADIOS FOR THE ASHEVILLE POLICE DEPARTMENT

This item was removed from the Consent Agenda for discussion and/or an individual vote.

E. RESOLUTION NO. 08-84 – RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A REIMBURSEMENT AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION REGARDING THE UPGRADE OF WATER LINES ON VARIOUS N.C. DEPT. OF TRANSPORTATION ROADS AS PART OF THE $40 MILLION REVENUE BONDS PROJECT

Summary: The consideration of a resolution authorizing the Mayor to enter into a reimbursement agreement with the N.C. Dept. of Transportation (NCDOT) regarding the upgrade of water lines on various NCDOT roads as part of the $40 million revenue bonds project; and associated budget amendment, in the amount of $70,000.

The revenue bond projects include upgrading water lines on Hendersonville Road, Brevard Road, Clayton Road, College Street, Tunnel Road, and Biltmore Avenue which are all NCDOT maintained roads. Some of the water line projects will require inspections during normal working hours as well as evening and night hours. The NCDOT is requiring additional inspection on these water line projects as part of their approval process. Initial cost estimate from the NCDOT is $70,000.00. This will be adjusted with a final invoice for additional funds or a reimbursement back to the Water Fund for any funds not expended.

These projects will enhance customer service by eliminating costly line breaks which cause water outages to area customers on the current lines and will assist in the looping of the water system in the South Buncombe District.

Pro:

- This will enable the construction projects on NCDOT roads to have additional in field inspection oversight on the revenue bond water line infrastructure improvement projects.

Cons:

- Funding for these inspections was not programmed due to this being a local NCDOT request.
- Funds will have to be reallocated from current capital funding.

Regarding the Strategic Operating Plan, the revenue bond projects are part of the City Council strategic plan to improve City infrastructure.

Funding of $70,000 is being reallocated from current fiscal year capital projects that will be covered by revenue bond proceeds.

Staff recommends City Council approve (1) a resolution authorizing the Mayor to execute the Reimbursement Agreement with NCDOT, WBS Element: 36249.2734 in the amount of $70,000; (2) approve the City Manager to execute any future supplemental agreements for this agreement; and (3) the associated budget amendment, in the amount of $70,000.

RESOLUTION BOOK NO. 31 – PAGE 147

F. ORDINANCE NO. 3606 – BUDGET AMENDMENT REGARDING A REIMBURSEMENT AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION REGARDING THE UPGRADE OF WATER LINES ON

VARIOUS N.C. DEPT. OF TRANSPORTATION ROADS AS PART OF THE $40 MILLION REVENUE BONDS PROJECT

Summary: See Consent Agenda "E" above.

ORDINANCE BOOK NO. 24 – PAGE 413

G. BUDGET AMENDMENT TO FACILITATE A PASS-THROUGH OF FEDERAL PLANNING FUNDS TO THE LAND-OF-SKY REGIONAL COUNCIL FOR MANAGING THE METROPOLITAN PLANNING ORGANIZATION

This item was removed from the Consent Agenda for discussion and/or an individual vote.

H. ORDINANCE NO. 3608 – ORDINANCE AMENDING ARTICLE VI OF THE CODE OF ORDINANCES REGARDING ELECTRICIANS AND THE ELECTRICAL JOURNEYMAN PROGRAM

Summary: The consideration of an Ordinance amending Article VI of Chapter 9 of the Code of Ordinances regulating electricians and the electrical journeyman program.

Article VI of Chapter 9 in the Code of Ordinances was adopted May 3, 1994. This article allows the Board of Electrical Examiners, appointed by the Council, to issue a Class I Journeyman Electrician's License. This Ordinance specifies the Examining Board appointments and allows the Board to give examinations for those who desire to work in the electrical trade within the City of Asheville. It specifies requirements for obtaining and renewal of the Journeyman license.

A person applying for the Journeyman License must pass an exam and be employed by a licensed electrician. This ordinance change requires the City of Asheville to issue a photo ID, requires the Journeyman to obtain 8 hours of continuing education approved by the North Carolina Board of Examiners for Electrical Contractors, and allows a Journeyman two helpers. The current Ordinance issues a non-photo ID, has no continuing education requirement, and allows only one helper.

The Ordinance changes allow the City of Asheville through the Board of Electrical Examiners to provide enhanced service to the citizens through the Journeyman program. The photo ID prevents exchange of cards without taking the Journeyman exam. The continuing education meets the standards for licensed electricians and closely matches the continuing education for an electrical inspector and should increase the quality of work. Allowing two helpers rather than one will increase the amount of work that can be expected thereby increasing time for completion of projects without negatively affecting quality.

This action complies with City Council Strategic Operating Plan on Partnerships to Improve Critical Services and Infrastructure by providing sufficient, safe, and affordable housing for Asheville residents.

Pros:

- Eliminates the potential for non-photo ID's being exchanged.
- Adds a continuing education component to increase code knowledge and increase quality.
- Allows the Journeyman the assistance of two helpers.

Cons:

- Requires the City to verify continuing education for renewals.

- Requires the Journeyman to attend 8 hours of continuing education or take the certification exam for renewal.

Adopting the Ordinance will have no fiscal impact on the City of Asheville.

City staff recommends City Council adopt the Ordinance amending Article IX of Chapter 9 of the Code of Ordinances.

ORDINANCE BOOK NO. 24 – PAGE 417

I. RESOLUTION NO. 08-85 – RESOLUTION AUTHORIZING THE CITY COUNCIL TO DISSOLVE THE SUSTAINABLE ECONOMIC DEVELOPMENT ADVISORY COMMITTEE

Summary: The consideration of a resolution authorizing the dissolution of the Sustainable Economic Development Advisory Committee.

The establishment of the Economic Development Advisory Committee was authorized by Resolution No. 05-184. The Economic Development Advisory Committee's name was officially revised to be the Sustainable Economic Development Advisory Committee by Resolution No. 06-72. On February 19, 2008, City Council moved to dissolve the Sustainable Economic Development Advisory Committee, due to the increased roles of HUB and Council's Planning and Economic Development Committee within the City of Asheville.

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Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Vice-Mayor Davis moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Russell and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

A. APPROVAL OF THE MINUTES OF THE FORMAL MEETING HELD ON APRIL 8, 2008

Upon request by Councilwoman Cape, the April 8, 2008, minutes were amended to replace her federal legislative items with the following:

(1) S.1675 Local Community Radio Act of 2007 – A bill to implement the recommendations of the Federal Communications Commission report to the Congress regarding low-power FM service. (Councilwoman Cape)

(2) S.234 – Wireless Innovation Act – Would make broadband available to unconnected neighborhoods and communities – especially rural and mountainous areas – by exploiting unused frequencies in the broadcast spectrum known as "white spaces." (Councilwoman Cape)

(3) Support to fund the expansion of the ERC broadband and fiber optic network in our region for education, medical and emergency service support. (Councilwoman Cape)

(4) Lend support to the Land-of-Sky Council of Government request for funding for Regional Growth Management Planning Initiative for Western North Carolina. (Councilwoman Cape)

(5) Support funding for energy efficiency and conservation block grants. (Councilwoman Cape)

Vice-Mayor Davis moved to amend the April 8, 2008, minutes as amended. This motion was seconded by Councilman Russell and carried unanimously.

B. RESOLUTION NO. 08-82 - RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE PROPERTY OFF HAZZARD STREET

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer to purchase property off Hazzard Street.

A bid has been received from John Petty, Jr. in the amount of $2,600 for the purchase of land off Hazzard Street.

The land off Hazzard Street is one of three (3) parcels donated to the City in 2001, by Sidney and Mary Schochet and Dale and Irwin Plisco. The parcels were remnants from Department of Transportation takings in connection with the construction of South Charlotte Street. The subject parcel is a rectangular shaped fragment lot comprising 0.03 acre±. It is zoned RS8, and it is not suitable to build on without additional land combination. The bid from John Petty is in the amount of $2,600 and is higher than the tax appraised value of the property. Mr. Petty proposes to acquire the subject parcel for assemblage with the vacant property he owns next door.

The Parks, Recreation and Cultural Arts Department has verified that this parcel does not lie within an existing or proposed greenway trail according to the Greenway Master Plan and therefore is not an advantageous property to be held for use by the City of Asheville.

Pros:

- The sale will be at fair market value as established by the upset bid process.
- It will return property not needed for public use to the tax rolls.
- It will transfer responsibility for maintenance to the private sector.

Con:

- There is no negative impact.

The proceeds from the sale of this parcel will benefit the General Fund via the Parks, Recreation and Cultural Arts Department.

Economic Development staff recommends adoption of the resolution which will initiate the sale of the property through the upset bid process.

Councilwoman Cape said that her questions were responded to by City staff.

Councilwoman Jones moved for the adoption of Resolution No. 08-82. This motion was seconded by Councilman Russell and carried on a 5-2 vote with Councilwoman Cape and Vice-Mayor Davis voting "no."

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C. RESOLUTION NO. 08-83 – RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT GRANT FUNDS UNDER THE N.C. OFFICE OF JUSTICE PROGRAMS OF THE DEPARTMENT OF JUSTICE TO MAKE TECHNOLOGY IMPROVEMENTS IN THE AREA OF POLICE RADIOS FOR THE ASHEVILLE POLICE DEPARTMENT

Summary: The consideration of a resolution authorizing the City Manager to accept grant funds under the North Carolina Office of Justice Programs of the Department of Justice (JAG); and the associated budget amendment, in the amount of $72,496.

The City of Asheville has been awarded a grant from the JAG in the amount of $72,496 to be shared with Buncombe County Sheriff's Department. Asheville Police Department and the Buncombe County Sheriff's Department have signed a Memorandum of Understanding and APD will be the grant funds administering agency. The purpose of the grant program is to make technological improvements in the area of police radios for the Asheville Police Department.

Motorola, Inc. is the vendor and below is the description of the products:

16	XTS2500 Model III Handheld Radio:	$3,362.00
16	Extra batteries (One per radio):	$77.00
16	Noise canceling speaker microphones:	$74.50
	Total per Radio:	$3,513.50
	Total for Grant:	$3,513.50 x 16 = $56,216

Pros:

- Will contribute to the reduction of crime by improving the effectiveness of police officers while working special events.
- By reducing injures to law enforcement as well as the public, this will aid in quality of life issues.
- Officer safety will be increased through proper training of the officers.
- By using these grant funds for this needed equipment, APD officers will have the items they need to properly respond to violent group incidents, that budget constraints would not allow otherwise.

Con:

- The City Of Asheville and the Asheville Police Department would be required to maintain the upkeep of the equipment, replacing equipment when needed.

This action complies with City Council's Strategic Operating Plan goal for Strong City and County Partnerships. This joint grant allows the City and the County to work together on an improvement initiative.

There is no local match and the City of Asheville's portion of the grant is $58,365.

City staff recommends City Council adopt (1) the resolution authorizing the City Manager to enter into an agreement with the North Carolina Office of Justice Programs of the Department of Justice for grant monies; and (2) the associated budget amendment, in the amount of $72,496.

Councilman Mumpower felt the City should pay for their own radios and that the area we need help from the State is with the dysfunctional Court system.

Upon inquiry of Councilwoman Cape, Police Chief Hogan said that this is a continuation of grant dollars and the grant is specifically earmarked.

Councilman Newman said there is no debating the need for investments in the justice system, but he felt the correct way to advocate for that is for Council and our citizens to let our legislators know that is a priority that has been neglected too long. The wrong way to advocate for that is to allow Asheville taxpayer's money to go to other communities.

Councilman Newman moved for the adoption of Resolution No. 08-83. This motion was seconded by Vice-Mayor Davis and carried on a 6-1 vote, with Councilman Mumpower voting "no."

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D. ORDINANCE NO. 3605 – BUDGET AMENDMENT TO ACCEPT GRANT FUNDS UNDER THE N.C. OFFICE OF JUSTICE PROGRAMS OF THE DEPARTMENT OF JUSTICE TO MAKE TECHNOLOGY IMPROVEMENTS IN THE AREA OF POLICE RADIOS FOR THE ASHEVILLE POLICE DEPARTMENT

Summary: See Consent Agenda "C" above.

Councilman Newman moved for the adoption of Ordinance No. 3605. This motion was seconded by Vice-Mayor Davis and carried on a 6-1 vote, with Councilman Mumpower voting "no."

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G. ORDINANCE NO. 3607 – BUDGET AMENDMENT TO FACILITATE A PASS-THROUGH OF FEDERAL PLANNING FUNDS TO THE LAND-OF-SKY REGIONAL COUNCIL FOR MANAGING THE METROPOLITAN PLANNING ORGANIZATION

Summary: The consideration of a budget amendment, in the amount of $300,000, to facilitate a pass-through of federal planning funds to the Land of Sky Regional Council.

This is an action item to follow through on a resolution by City Council on February 26, 2008, to approve a contract with the Land of Sky Regional Council for a pass-through of federal planning funds for transportation planning.

Pro:

- This is a follow-up on previously approved contract. The contract allows the Land of Sky Regional Council to begin accessing federal planning funds to hire staff and begin assuming the role of managing the MPO.

Con:

- None noted.

Although this is not directly tied to the Strategic Operating Plan, this moves a regional planning function to a regional agency. This action potentially creates greater efficiency in the transportation planning process, and frees the City of this responsibility.

This is a pass-through of federal planning funds. There is no net impact to the City budget. The City has an ongoing commitment with other local governments to share the 20% local match. The City's contribution equates to about 6% of the total.

City staff requests City Council approve a budget amendment, in the amount of $300,000, in order to pass-through federal planning funds to Land of Sky Regional Council per a previously approved contract.

Councilman Mumpower said that we have a $10 Trillion dollar national debt and we are borrowing money that our grandchildren will have to pay.

Councilman Newman spoke in support of the action and explained how this is a strong step for support for regional governance and regional planning.

Mayor Bellamy said that people who are concerned about the federal government need to vote in that everyone can have a part in making changes. As a local government, she felt it is important that we take back some of what the Asheville taxpayers are paying into the federal system and use it efficiently and effectively. This is a collaborative effort with Land-of-Sky Regional Council and there is accountability through their transparency. As a member of the Board, she invited anyone to review their financial information to see that Asheville's partnership with them helps not only Asheville but helps smaller communities through Buncombe County, Madison County, Haywood County and Transylvania County. We need more collaboration on transportation in our area. North Carolina is projected to grow over the next 30 years by 4 Million people and we must plan for that growth. She was pleased to see a partnership of 4 counties in our region who are looking at issues for today and for our future.

Councilman Newman moved for the adoption of Ordinance No. 3607. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

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III. PRESENTATIONS & REPORTS:

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF PROPERTY IDENTIFIED AS CARRIER PARK LOFTS AND STUDIOS, LOCATED ON SHORT MICHIGAN AVENUE, CORDOVA STREET AND REDBO DRIVE, FROM NEIGHBORHOOD BUSINESS DISTRICT AND RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO RIVER DISTRICT/CONDITIONAL ZONING FOR 13 LIVE/WORK UNITS

ORDINANCE NO. 3609 - ORDINANCE TO CONDITIONALLY ZONE PROPERTY IDENTIFIED AS CARRIER PARK LOFTS AND STUDIOS, LOCATED ON SHORT MICHIGAN AVENUE, CORDOVA STREET AND REDBO DRIVE, FROM NEIGHBORHOOD BUSINESS DISTRICT AND RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO RIVER DISTRICT/CONDITIONAL ZONING FOR 13 LIVE/WORK UNITS

Mayor Bellamy opened the public hearing at 5:47 p.m.

Urban Planner Alan Glines said that this is the consideration of an ordinance to conditionally zone property identified as Carrier Park Lofts and Studios, located on Short Michigan Avenue, Cordova Street and Redbo Drive from Neighborhood Business District and RM-16 Residential Multi-Family High Density District to River District/Conditional Zoning for 13 live/work units. This public hearing was advertised on April 11 and 18, 2008.

Mr. Glines said that the current proposal seeks to develop 13 live / work units on four parcels totaling an acre in west Asheville near Carrier Park and across from Pisgah View Apartments. The property has road frontage on three streets: Short Michigan Avenue, Cordova Street (Parkside) and Redbo Street. The site is zoned RM-16 (residential multi-family high density) and Neighborhood Business (NB) and currently has a single family house and a small vacant building on the property. The proposal is seeking River District Conditional Zoning in order to allow live / work units which are not allowed in the RM-16 zoning district. Staff did consider the applicability of Urban Place District zoning for this proposal which has been applied in the past to several river area properties but the nature of Urban Place did not provide the best fit. Urban Place is a true mixed-use district with thorough design and operation standards and in

contrast the River District is more flexible without mixed-use design and development requirements and is more applicable to the current proposal.

The proposed structures will be three stories in height: the living space is located on the second and third floors with the studio / workspace on the lower level regardless of the entry point for each unit. Seven of the units will provide a front door and courtyard space along Cordova Street and the remaining six units are placed at a lower internal portion of the site and will face the internal parking area. From this central parking area all of the studio / work spaces have their access.

The project will provide a direct access to Carrier Park via a sidewalk connection along Short Michigan Avenue. Carrier Park is one of the most visited parks in the City. Even though the zoning will be River/Conditional Zoning the list of allowable uses for the studio/ work space will be limited to artists and other design professions and the types of activities that could be expected in a home occupation as part of a residence. The difference between this proposal and a stricter home occupation use is that with Carrier Lofts there will be some limited retails sales that will be ancillary to the primary use of the work space and the work space is not limited to a percentage of the size of the home.

The project will incorporate green building features in each unit and will be certified under the NC Healthy Built home program. Skylights, sun shades, natural cross-ventilation and higher insulation values will be included in the building design. Although the leasing/ sales process will not meet the City of Asheville Affordable Housing guidelines an artist who may live here will not have both a house payment and a studio rental payment since they will be combined into a single amount.

The Unified Development Ordinance (UDO) requires that landscape buffers be provided along property lines where adjacent to residential zoning: buffers will be required along Short Michigan Avenue and Redbo Street given the adjacent zoning. Street trees will be provided per UDO requirements along Cordova Street because this is considered the main facade of the project. Both parking lot landscaping and building impact landscaping will be provided to meet other landscape code requirements.

A 20-foot wide Type A buffer is required along Redbo Street but the pavement of the street currently encroaches onto the property. The applicant is seeking a modification of the landscape standards to reduce the landscape buffer along Redbo Street to 15 feet in width (rather than 20-feet) in order to avoid removing pavement along Redbo Street. The landscape buffer will be planted 15 feet wide at the narrowest point with the same number of plantings that would normally be required in the standard Type A buffer.

The River District is developed to celebrate, conserve, promote and manage those areas on both sides of the French Broad and Swannanoa Rivers. The City adopted Wilma Dykeman Riverway Master Plan, a vision plan, promotes transportation, recreation, residential, arts and other business development along the river corridors. The proposed development should complement the overall goals of the River District by providing a smaller arts destination on a compact infill site. Encouraging and reinforcing the river corridors as places for artists and art studios is a goal of the plan

Section 7-7-8(d)(2) of the UDO states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**

The project has been reviewed by the technical review committee and is not expected to endanger public health or safety. The project will comply with city and state codes and ordinances

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
The development responds to the natural topography of the site by locating the buildings in a manner that steps down with the natural fall of the land. The project will also comply with storm water requirements, open space and pervious lot area requirements. The design of the project and the way it responds to the conditions of the site makes the development reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
The development of the site is not expected to injure the value of surrounding properties. The project will be incorporating artist studio / flex work spaces that are considered low impact uses. Landscape buffers provided along the perimeter of the property will assist in mitigating any impacts resulting from the development.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
The proposal has a decidedly residential design and although the townhouse buildings are larger than single family homes they should be an attractive fit with the neighborhood. There are a number of industrial buildings nearby or on adjoining sites and Pisgah View Apartments is across Short Michigan Avenue. The development will be in harmony with the scale, bulk, coverage, density and character of the surrounding neighborhood.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
The development furthers the goals of the Wilma Dykeman Riverway Master Plan because it encourages redevelopment that expands opportunities for artists and arts destinations and provides residential units in close proximity to parks and greenways. The comprehensive plan also supports redevelopment of infill lots for higher densities and a mix of compatible uses. The use and development of the site will conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other plans adopted by the City.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
The project has been reviewed by the Technical Review Committee and was found to have sufficient infrastructure. The development is less than one block from Amboy Road and is served by public services and infrastructure. Two bus routes operate in the vicinity of the project area: routes One and Nine travel to Pisgah View Apartments.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
The proposal is limited in scale and is not expected to create undue traffic congestion. Due to the small scale a TIA was not required for this project.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable and supported by City adopted plans and ordinances.

This conditional zoning request was recommended for approval by a 7-0 vote by the Planning and Zoning Commission at their March 5, 2008, meeting. Besides the development team no other people spoke at the Planning & Zoning meeting. .

Pros:

- Demonstrates that public infrastructure such as the park system becomes a catalyst for private sector development
- River District is enhanced as the place for the arts in the community
- Provides live / work units promote smart growth goals and reduces sprawl
- Project infrastructure will provide a better community connection to Carrier Park
- Project buffers industrial uses and residential areas

Con:

- An affordable housing unit will be lost

The Carrier Lofts/CZ project was recommended for approval by the Planning and Zoning Commission by a vote of 7-0 with the requested buffer modification. The River District Design Review Committee reviewed the proposal at their January 23, 2008 meeting and enthusiastically voted to approve the design. Staff also supports the conditional zoning request, site plan, and the request for the buffer modification. The proposal is reasonable and supports the goals stated in the City adopted plans and reports prepared for the River district and surrounding areas.

Mr. Ray Quate, property developer/owner/general contractor, spoke in support of the project. He said the live / work studios will be leased or purchased. In addition, they are providing a sidewalk that ties this development into Carrier Park.

At 5:54 p.m., Mayor Bellamy closed the public hearing.

When Councilwoman Cape asked if the units are affordability, Mr. Quate felt they are all affordable because of the quality of work and the quality of product. She suggested Mr. Quate talk with the City's Community Development Director on how he might make one or two units affordable for artists just starting out.

When Councilwoman Jones asked for the price of a unit, Mr. Quate felt that if all expenses are taken into account (residential, studio, transportation, etc.) then they are affordable.

In response to Councilman Mumpower, City Attorney Oast said that providing affordable housing is not part of the list of conditions in a conditional zoning ordinance. City Attorney Oast understood that Council was expressing their desire that the applicant strive to make the units affordable for people with modest income.

Mayor Bellamy thanked Mr. Quate for his investment in this area. The sidewalk was desperately needed and what he is doing is adding another safety element to that community.

Councilwoman Jones moved to call the question. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no".

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

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Based on the above findings and the analysis provided in the staff report, Councilman Mumpower moved to adopt Ordinance No. 3609, along with the site plan and landscape modification, and subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; and (5) This project will undergo final review by the TRC prior to issuance of any required permits. This motion was seconded by Councilwoman Jones and carried unanimously.

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B. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF PROPERTY IDENTIFIED AS ABBERLY RIDGE APARTMENTS LOCATED AT 7 PACODA STREET FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO REGIONAL BUSINESS DISTRICT/ CONDITIONAL ZONING FOR THE DEVELOPMENT OF A 422 UNIT APARTMENT COMPLEX

ORDINANCE NO. 3610 - ORDINANCE TO CONDITIONALLY ZONE PROPERTY IDENTIFIED AS ABBERLY RIDGE APARTMENTS LOCATED AT 7 PACODA STREET FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO REGIONAL BUSINESS DISTRICT/ CONDITIONAL ZONING FOR THE DEVELOPMENT OF A 422 UNIT APARTMENT COMPLEX

Mayor Bellamy opened the public hearing at 6:05 p.m.

Urban Planner Nate Pennington said that this is the consideration of an ordinance to conditionally zone property identified as Abberly Ridge Apartments located at 7 Pacoda Street from RM-8 Residential Multi-Family Medium Density District to Regional Business District/Conditional Zoning for the development of a 422 unit apartment complex. This public hearing was advertised on April 11 and 18, 2008.

Mr. Pennington said that the applicant seeks the conditional zoning of 23.56 acres currently zoned RM-8, to RB/CZ for a multi-family residential project with 422 new apartment units. The property is located at 7 Pacoda Street off of Brevard Road and behind the Toys R' Us and Ingles stores within the City's extraterritorial jurisdiction (ETJ) area.

The project is proposed to be built in two phases with eight of the proposed 14 buildings to be built in the first phase. If the conditional zoning application is approved, the site would have an overall density of 17.87 dwelling units per acre. Multi-family residential uses at the density proposed would be permitted as a conditional use in the RB zoning district which allows for a maximum net density of 32 dwelling units per acre.

The units will be housed in four different building types as indicated on the site plan. The following list provides a breakdown of the proposed development:

- 14 total buildings
- 3 stories (building type 2 is a split 3-4 story configuration)
- No building type exceeds 40 feet from primary fire department access to ceiling height of highest occupied floor.
- 169 – one bedroom units
- 211 – two bedroom units

- 42 – three bedroom units

The majority of the site is currently developed with approximately 9 single-family dwellings and accessory structures. Interspersed throughout the site are previously cleared areas maintained as mowed lawns/fields and vacant/wooded expanses. Thirty (30) percent of the site has been designated as open space and tree save area with the majority of this space located along the northwest and southwest quadrants of the property. In addition, the property requires a 20 foot wide Class "A" bufferyard along the north and western perimeters of the property as indicated on the site plan.

Access to the site is proposed via Pacoda Street and Oak Terrace Road from Brevard Road. Both streets will require improvements to accommodate the proposed development. The applicant is proposing a signalized access point along Oak Terrace and Brevard Roads and the access at Pacoda Street is restricted to a right in/right out configuration due to the existing concrete median in the center of Brevard Road. Further, the applicant will be pursuing a road and right-of-way abandonment for the portion of Oak Terrace Road that runs parallel to the Toys R' Us store. It was brought to staff's attention, by the applicant and the Public Works Department, that the portion of Oak Terrace Road that runs parallel to the self storage facility and adjacent to Sardis Road was abandoned in 2000. A traffic study has been submitted to the City Traffic Engineer for review. The proposed signalized access along Oak Terrace and Brevard Road will require approval from N.C. Dept. of Transportation.

The project site is currently located in the City's extraterritorial jurisdiction area and the developer has indicated a willingness to pursue a voluntary annexation of the subject properties. Staff has received a list of the proposed rental rates that do not appear to meet the City's affordability guidelines. The applicant, however, is providing a mix of differential rental rates. At the Planning and Zoning Commission meeting it was noted by a member of the Commission that some of the rental rates proposed by the developer appear to fall within the acceptable range of what is considered "workforce housing." Additionally, the applicant has agreed to institute green building techniques into the construction of the project, and has provided a list of environmental considerations.

The subject site is surrounded by single-family uses to the north and west zoned RS-4 and RM-8, automobile sales and service uses to the south zoned CB II, and Ingles, Toys R' Us and self-storage units to the East zoned RB.

The Regional Business District is established to provide areas for large scale commercial operations. This district is intended to encourage innovative development that is integrated with adjacent uses. It is not the intent of the district to encourage strip commercial area, but rather a concentration of commercial activities with an overall design scheme. This district is designed to be located around the intersections of high traffic volume thoroughfares such as interstate highways and arterial roads. This district permits a wide range of commercial uses and is easily accessible by the automobile. The Regional Business District is characterized by high traffic generation, large structures which may contain multiple businesses, and shared parking and access between adjacent businesses. Although the automobile and bus are the primary modes of transportation to this district, pedestrian connections between the businesses within the district enhance the functionality of the district.

At the time of this writing, staff has received one communication from an adjacent property owner regarding the effect of the waterline extension to their property in relation to this project. At the TRC meeting, one individual expressed concern about stormwater runoff and the effect on adjacent property values if the project is constructed. No concerns were voiced at the Planning and Zoning Commission meeting.

At their March 17, 2008 meeting the Technical Review Committee (TRC) approved this project subject to the conditions in their March 17, 2008, staff report.

At their April 2, 2008, meeting the Planning and Zoning Commission unanimously approved this project subject to the conditions in the staff report and the addition of condition number seven regarding traffic mitigation improvements.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in Section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
This has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and all other applicable laws and standards that protect the public health and safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
The proposed use is compatible with the surrounding natural features and topography. The project must comply with all City standards in regards to grading and erosion control. Over seven acres of the site will be maintained as open space and tree save areas. A 20-foot wide Class "A" buffer will be installed along the northern and western perimeters of the property.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
Staff does not expect that the proposed use would have anything more than a minimal impact on neighboring property values. A 20-foot wide landscape buffer will be installed along the northern and western perimeters of the site where adjacent to lower density residential uses that will assist in mitigating any negative impacts resulting from the proposed use.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
The requested change in zoning from RM-8 to RB will allow a net increase of approximately 9 additional dwelling units per acre (or twice) the allowable density than the RM-8 zoning district would accommodate. Given the proximity of the Biltmore Square Mall and surrounding commercial development, staff feels that a multi-family development of this size and density is appropriate for the area.

   In addition, the higher density development could serve as a buffer/transition area to the existing RS-4 zoning and RM-8 zoning to the north and west of the site. A 20-foot wide landscape buffer will be installed along the northern and western perimeters of the site where adjacent to lower density residential uses that will assist in mitigating any negative impacts resulting from the proposed use.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
The application of compatible infill growth and affordable housing supports several goals and objectives as described in both **The Asheville City Development Plan 2025** and the

Strategic Operating Plan (See **Compliance with Comprehensive Plan** and **Strategic Operating Plan Considerations** in above staff report).

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
The proposed development is located near transportation facilities and other utilities appear adequate A transit stop for the Asheville City bus system is located across Brevard Road at the Biltmore Square Mall. The initial technical review by other technical agencies and utility providers has not revealed any problems for serving the use.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
The proposed project is anticipated to generate 211 vehicles per hour (42 vph ingress and 168 vph egress) during the morning peak hour and 250 vehicles per hour (162 vph ingress and 87 vph egress) during the afternoon peak hour at full build-out conditions (three years). Based on these anticipated peak hour traffic volumes, a traffic impact study was required. The scope of work included six intersections along NC 191 (Brevard Road) and the annual traffic growth rate was 2 ½%. One of the mitigation improvements included a traffic signal at the intersection of NC 191 (Brevard Road) and Oak Terrace Road as well as right-turn lanes along the NC 191 (Brevard Road) southbound approach at the subject intersection and the intersection of NC 191 (Brevard Road) and Pacoda Street. Since these improvements would be along a state-maintained street, the N.C. Dept. of Transportation has final approval regarding the proposed mitigation improvements.

The traffic impact study has indicated that severe delay and a poor level of service can be expected along the Oak Terrace Road approach if a traffic signal is not installed. This delay could be shifted to the nearby intersections as vehicles attempt other means of access and/or vehicles would tend to accept shorter gaps in the traffic stream which could increase the possibility of crashes. The study has also indicated that the nearby intersections should function in an acceptable manner provided the mitigation improvements are installed.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:

- The proposed development will provide an additional 422 units to the housing rental market.
- Provides another opportunity to further the City's goal of high density infill development.
- Provides an opportunity for the inclusion of 23.56 acres into the city limits by means of voluntary annexation.

Cons:

- Some citizens may perceive the rezoning as an effort to increase the allowable density in this area.
- The proposed rental rates provided by the applicant do not meet the City's criteria for providing affordable housing.

The City Traffic Engineer asked that a condition be imposed "The mitigation improvements identified in the Traffic Impact Study should be constructed subject to approval by the N.C. Dept. of Transportation. If the N.C. Dept. of Transportation denies any of the mitigation improvements, the Traffic Impact Study shall be revised to identify additional mitigation improvements that the N.C. Dept. of Transportation shall accept."

Staff recommends approval of the proposed project and Conditional Zoning request subject to the conditions in the TRC staff report and the standard conditions as follows: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) The applicant must make application for a lot recombination prior to the issuance of zoning permit; (3) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (4) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (5) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans must gain approval through the Planning and Development Department; (6) This project shall undergo final review by the TRC prior to issuance of any required permits; and (7) The mitigation improvements identified in the Traffic Impact Study should be constructed subject to approval by the N.C. Dept. of Transportation. If the N.C. Dept. of Transportation denies any of the mitigation improvements, the Traffic Impact Study shall be revised to identify additional mitigation improvements that the N.C. Dept. of Transportation shall accept.

Mr. Clay Mooney, Landscape Architect with Design Associates, explained the project in detail, noting that there will be 422 total units - 14 buildings on the site which will be built in two phases. He said there are 887 parking spaces including 28 handicapped accessible spaces. He said there will be two access points on Oak Terrace with proposed traffic signal at Brevard Road, pending approval by the N.C. Dept. of Transportation. The stormwater will be collected in a centralized stormwater structure. He explained the several landscaping features for the site, noting they have 7 acres dedicated to tree save and 3.97 acres dedicated to open space. Regarding the planting requirements, there will be over 3,000 trees and shrubs planted within the development. The site is located within the City's ETJ and the developer is willing to go through the voluntary annexation process as a condition of the project. He explained this is a good infill development and urged Council to support the project.

At 6:13 p.m., Mayor Bellamy closed the public hearing.

Mr. Mooney responded to various questions/comments from Council, some being, but are not limited to: are 887 parking spaces needed; is the surface parking impervious; what are the stormwater mitigations on the project; what did the traffic impact study show in terms of traffic infrastructure and levels of service on Brevard Road; are there any plans to widen Smoky Park Highway.

In response to Mayor Bellamy about a manager on site due to the number of units, Mr. Bo Cook, with HH Hunt Corporation who is the applicant, explained that they own their own management company. He said that they have incentives for their managers to live on site or within a certain distance to address any complaints that come to their attention.

When Mayor Bellamy asked about services, City Manager Jackson said that this is a well served area in terms of public safety.

In response to Councilwoman Cape, Assistant Director of Transportation & Engineering Ken Putnam said that prior to the plans going to the TRC, staff tries to identify other potential access/egress points to spread the traffic out.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Based on the above findings and the analysis provided in the staff report, Councilman Mumpower moved to adopt Ordinance No. 3610, subject to the conditions recommended by City staff as follows: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) The applicant must make application for a lot recombination prior to the issuance of zoning

permit; (3) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (4) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (5) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans must gain approval through the Planning and Development Department; (6) This project shall undergo final review by the TRC prior to issuance of any required permits; and (7) The mitigation improvements identified in the Traffic Impact Study should be constructed subject to approval by the N.C. Dept. of Transportation. If the N.C. Dept. of Transportation denies any of the mitigation improvements, the Traffic Impact Study shall be revised to identify additional mitigation improvements that the N.C. Dept. of Transportation shall accept. This motion was seconded by Vice-Mayor Davis and carried unanimously.

ORDINANCE BOOK NO. 24 - PAGE 425

C. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR PROJECT IDENTIFIED AS RAVENSCROFT, LOCATED ON RAVENSCROFT DRIVE AND COLLIER AVENUE, FOR A PROPOSED MIXED-USE COMMERCIAL AND 150-UNIT RESIDENTIAL DEVELOPMENT

ORDINANCE NO. 3611 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROJECT IDENTIFIED AS RAVENSCROFT, LOCATED ON RAVENSCROFT DRIVE AND COLLIER AVENUE, FOR A PROPOSED MIXED-USE COMMERCIAL AND 150-UNIT RESIDENTIAL DEVELOPMENT

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

City Attorney Oast also said that the Authorized Practice Committee of the North Carolina State Bar has issued an advisory opinion that appearing in a representative capacity for a party before a local governmental body in a quasi-judicial proceeding is the practice of law, especially with respect to such aspects of the hearing as examining or cross-examining witnesses, or advocating for legal conclusions or results. This does not prevent persons, including land use professionals, from presenting information or expressing opinions within their knowledge or area of expertise.

City Attorney Oast noted that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 6:30 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

Urban Planner Jessica Bernstein submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

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Ms. Bernstein said that this is the consideration of the issuance of a conditional use permit for property identified as Ravenscroft, located on Ravenscroft Drive and Collier Avenue, for a proposed mixed-use commercial and 150-unit residential development.

Ms. Bernstein said that the applicant is requesting review of site plans for five mixed-use structures with residential and commercial components. Pursuant to section 7-5-9(a) of the Unified Development Ordinance (UDO), any residential development of more than 50 units and any mixed-use structure with more than 45,000 square feet located within a half-mile of the Central Business District (CBD) shall be considered as a Level III project and a Conditional Use.

The project area consists of 7 parcels (6 PINs) with a combined area of 2.83 acres located on Banks and Collier Avenues and Ravenscroft Drive, south of Hilliard Avenue in the CBD (Location Map, Aerial Map, Elevation Drawings, Site Plan - Attachments to City Exhibit 3). The applicant is proposing 5 structures, 4 of which will be 7-stories and one at 6 stories. The buildings contain a mix of residential condos on upper levels and commercial spaces on the ground floor, also including some live/work spaces.

There will be 150 residential units (approximately 249,000 square feet overall) and between 15,000 – 16,000 square feet of retail space (retail area subject to some flexibility depending on viability of live/work units). The breakdown is proposed as follows:

- 8 retail spaces (varying sizes)
- 24 live/work spaces (varying sizes)
- 86 2-bedroom units (1,000 – 1,200 square feet)
- 31 3-bedroom units (1,600 – 1,800 square feet)
- 13 penthouse units (no larger than 2,100 square feet)

This development proposes the creation of 2 new private streets, the widening of Collier Avenue and the closing of a portion of Ravenscroft Drive as well as an unopened alleyway. Parking will be provided on-street and in a small surface lot within the site, as well as two subsurface deck levels. Sidewalk widths vary throughout the project area, generally meeting or exceeding the 10' requirement for the CBD. However, in a few locations the width is less than 10' and must be approved by the City Traffic Engineer (along park parcel and amenity space on Collier Avenue, in front of Building E on Banks Avenue).

Landscaping is proposed according to the City's ordinance and includes more than the required number of street trees and vehicular use area plantings. An area with existing trees in the northwest corner of the project site is being preserved and translated into a private passive park parcel (.46 acres) for the use of the residents.

Significant streetscape amenities are proposed, including pervious pavers, planters and outdoor seating areas throughout the project site. A hardscaped plaza is proposed as an entry feature at the northernmost point of the development, and includes a water feature, shade trees and terraced seatwalls. Additional landscaping has been incorporated throughout the site as buffers from adjacent uses. The pedestrian environment has been considered through the use of the hardscaping and plaza areas and access throughout the layout and to streets on all sides.

Setbacks vary slightly throughout the project site, generally meeting the 0' requirement. In the few areas where there setback is farther from the back of sidewalk, that increased area incorporates hardscaping and pedestrian plaza amenities and in no place is larger than approximately 11.5'. This increase is acceptable due to the plaza/courtyard environment created.

Stormwater is proposed to be controlled through a series of pervious pavement and underground stormwater storage and treatment areas. Combined systems will retain at least the pre-development runoff from a calculated 25-year storm.

The project was approved by the Downtown Commission on February 8, 2008. From recommendations during their design review, the applicant revised the plans to incorporate building entrances and greater activation along Collier Avenue and better pedestrian connectivity throughout the project. Materials and façade articulation were also discussed. No modifications from UDO standards were required. The applicant and architect have designed the new streets and proposed buildings in a way so that they "step" down along with the existing grade change on the site, resulting in a built environment that mirrors the natural environment.

On March 17, 2008, the Technical Review Committee (TRC) approved the project with the conditions as listed in the staff report. The project was recommended for approval by the Planning & Zoning Commission on April 2, 2008, by a unanimous vote of 6-0. At this meeting the applicant indicated that they will be seeking LEED certification on the core and shell of the buildings. No communication from abutters has been received, other than from an informational nature.

City Council must take formal action as set forth in section 7-5-5(e)(3) of the UDO, and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case pursuant to section 7-16-2(c) of the UDO. Staff's review indicates that all seven standards are met as proposed in the site plan.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   The project will meet State building code requirements and will be reviewed in detail by the Technical Review Committee to ensure compliance with safety requirements.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
   The site is an infill parcel in the south slope area of the Central Business District with existing grade changes with approximately a 30' – 40' difference from the northern to the southern end of the site. The applicant has designed the new streets and buildings in a way that they "step" down along with the grade, resulting in a built environment that mirrors the natural environment. Retaining walls are used where necessary.

   The retention of one of the only standing groves of trees in the CBD and reuse into a passive park space for the residents respects the existing environment and creates a valuable amenity for future City dwellers.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
   The parcels for the proposed development are under-utilized and largely vacant. The project is expected to enhance the values of adjoining properties.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
   The proposed project is located in the Central Business District where there is no height, density or maximum building size limitation. Nearby Zona Lofts (approved 8/2007) and Zona Village (approved 3/2008), are to be 15 and 11 stories and although these buildings have not yet been built, this structure will be compatible with the emerging character of this neighborhood.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
Smart Growth principles adopted in the 2025 Plan encourage these types of higher density, mixed-use infill developments. This project agrees with objectives of the Plan by encouraging development activity in an underutilized part of the City and supporting the livability and vitality of downtown by offering housing in close proximity to public transit and in a walkable urban location. The applicant has indicated that they intend to seek LEED certification on the core and shell of the building, are using pervious pavers and hoping to re-use surface runoff for irrigation onsite and are incorporating solar-powered bollards. However, the project does not include any affordable or workforce units, something that is not explicitly required but that is encouraged by City goals and objectives.

The 2025 Plan does emphasize the importance of the pedestrian environment – the design of this development is quite sensitive to the pedestrian experience and strengthens connectivity through clear walkways for "safe, comfortable travel" in and out of the project area. Additionally, the proposal includes street improvements that will enhance the connectivity and efficiency of the affected roadways.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
The project is located in the CBD in an area easily accessed for transportation, life and safety facilities and utility infrastructure.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
The project is not expected to create traffic congestion or a traffic hazard. A Traffic Impact Study has been submitted and accepted by the City Traffic Engineer. Parking is largely contained onsite (below-grade deck) and otherwise will utilize on-street parking throughout the site. Mixed-use areas such as the CBD can reduce traffic concerns by encouraging people to walk more or use public transit.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:

- This project provides new development and housing opportunities in an under-utilized are of the CBD.
- While not a requirement of the CBD, this project proposes more than enough parking on-site to satisfy the needs of the residents.
- The wooded .46 acre parcel is proposed to be retained and incorporated into a passive park for the residents – a rare and valuable amenity to a highly urban core.
- The applicant will be seeking LEED certification on the core and shell of the buildings.

Con:

- None of the residential units will be offered at an affordable or workforce rate.

Staff recommends approval of the project inclusive of the following conditions but encourages the developer to consider including affordable or workforce housing as well as sustainable design features: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site,

landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; (5) This project will undergo final review by the TRC prior to issuance of any required permits; and (6) This project will comply with the requirements of the Emergency Wireless Communication Ordinance (Ordinance No. 3583).

Mr. David Payne, attorney/developer, explained who they took a large conceptual plan (450 unit project) and scaled it down to a project that will fit into the site in a positive way.

Mr. Matt Sprouse, Landscape Architect from Sitework Studios, explained how the site is underutilized, noting that all buildings on the site are deteriorating, vacant with one undeveloped parcel (Applicant Exhibit 1 - PowerPoint Presentation). In reviewing the site plan, some features include two new private streets, several pocket parks and the retention of .46 acres of vacant land (which contains more than 20 large black oak trees) which will be a private park fenced off and gated. He reviewed the pedestrian scale streetscape, along with some green features they are trying to incorporate, e.g., solar bollard with cut-off light fixtures, pervious pavement patterns. He reviewed a chart of building height relative to topography. They are also investigating ways to use stormwater from runoff for irrigation. He urged Council's support of this request.

Mr. Peter Alberice, from Camille Alberice Architects, showed conceptual drawings of the site. He noted four main characteristics of the project: (1) they have preserved land on the property; (2) the project will be LEED certified for the core and shell; (3) they lowered the density from 450 units to 150 units; and (4) they have not requested any variances. He then urged Council for their support.

Mr. Pat Whalen, Chairman of the Downtown Commission, spoke in support of the project, noting that the Commission voted to support the project unanimously. During the course of their work with the Commission and after talking with the neighborhood, the developer made many positive changes to the project.

After rebuttal, Mayor Bellamy closed the public hearing at 6:52 p.m.

Based on the above findings and the analysis provided in the staff report, Councilman Mumpower moved to adopt Ordinance No. 3611, adopting the proposed master plan for Ravenscroft, subject to the conditions recommended by City staff as follows: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; (5) This project will undergo final review by the TRC prior to issuance of any required permits; and (6) This project will comply with the requirements of the Emergency Wireless Communication Ordinance (Ordinance No. 3583). This motion was seconded by Councilman Newman and carried unanimously.

V. UNFINISHED BUSINESS: Ordinance Book 24 - page 429

A. SECOND AND FINAL READING OF ORDINANCE NO. 3602 – ORDINANCE DESIGNATING THE PROPERTY KNOWN AS THE HAMMOND-KNOWLTON HOUSE, LOCATED AT 30 KIMBERLY KNOLL, AS A LOCAL HISTORIC LANDMARK

Mayor Bellamy said that the first reading of this ordinance was on April 8, 2008, and a second reading is required due to the 4-2 vote of Council.

Councilman Mumpower felt that since this will give the property owner a significant tax break, he could not support the designation.

Councilwoman Cape moved for the second and final reading of Ordinance No. 3602. This motion was seconded by Councilwoman Jones and carried on a 5-2 vote, with Councilman Mumpower and Councilman Newman voting "no."

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B. ORDINANCE NO. 3612 - BUDGET AMENDMENT FOR THE PRITCHARD PARK COMMITTEE RECOMMENDATIONS

MOTION TO OFFICIALLY DISSOLVE THE PRITCHARD PARK COMMITTEE

Urban Planner Stephanie Monson said that this is the consideration of a funding mechanism for the Pritchard Park Cultural Arts Program; and the consideration of officially dissolving the Pritchard Park Committee.

She reviewed the budget information which was requested by Council, in response to the Pritchard Park Committee's recommendations for Pritchard Park programming at City Council's regular meeting on April 8, 2008. At that time, Council requested staff to provide a budget for the program, and respond to general questions about the operation of the program, before considering a funding mechanism to support the program.

The Pritchard Park Cultural Arts would produce a minimum of 90 programs during the summer and early fall. Performances would occur Monday through Friday from either 11am-1 pm or 5pm-7pm. Examples of the diverse performances include jazz, blues, and bluegrass groups, local heritage-based theater, storytelling for children, comedy improvisations, and Ukrainian folk dancing.

She briefly reviewed the program budget (including artist fees, marketing, park rental fees, insurance and administrative fees) which totals $51,050. The Pritchard Park Committee requests that Council waive the $100 per event park rental fees totaling $9,000 through event co-sponsorship; and outside agency funding support for the program in the amount of $10,000.

The fiscal impact of this action would be a total of $10,000 in funding and $9,000 in fee waivers.

City staff recommends that if Council wishes to (financially) support the program, that they accept the program's procession through the City co-sponsorship process (for the park rental fee waivers) and the program's procession through the Outside Agency Funding process (for the Committee's $10,000 request).

Staff recommends Council consider disbanding the Committee as they did provide the requested programming recommendations.

Councilwoman Cape moved to approve Ordinance No. 3612 to allocate $10,000 for this program and to waive the $9,000 in fees. This motion was seconded by Councilwoman Jones.

Councilman Mumpower spoke against using tax dollars for cultural events. He felt we should enforce our laws in Pritchard Park.

Councilwoman Cape said that Council asked the Pritchard Park Committee to go out and look for best practices for a park that was a detriment to a community because of behavior patterns. The Committee did that and she supported trying what other communities have found

success with - programming in parks. In addition, she felt that a safer community is achieved in other ways other than police officers.

Councilman Newman felt that we are doing a better job of enforcement of our laws in Pritchard Park. While he is supportive of this request now, there should be no assumption that this will be an annual automatic occurring commitment. In the future, he felt this request should be reviewed through the normal budget process.

When Mayor Bellamy asked for clarification of staff's recommendation, City Manager Jackson said that staff recognized this was a Council appointed Committee so they did not want to make dueling recommendations. The Committee's recommendation should stand on their own merits. Staff's attempt was to bring to Council's awareness that the types of requests the Committee is making are very much like outside agencies and the co-sponsorship process that we currently have. Staff was looking for direction as to how we treat these in relationship to those processes.

Mayor Bellamy noted that Council spent last week saying to the community that we have over $243,000 worth of requests for outside agency funding and co-sponsorship requests. And now, approval of this motion will put this program in front of all other requests. She felt that 90 programs is a lot for our staff in light of our other co-sponsorship events.

In response to Mayor Bellamy, City Manager Jackson said that if Council adopts the budget amendment, he would recommend the $10,000 come from the City Manager's Contingency, which has approximately $50,000 in it.

The motion made by Councilwoman Cape and seconded by Councilwoman Jones carried on a 6-1 vote, with Councilman Mumpower voting "no."

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At the request of Mayor Bellamy, with the consensus of Council, City Manager Jackson said that an outside agency agreement will be drawn up with the Friends of Pritchard Park with performance measures for accountability of City dollars.

In response to Vice-Mayor Davis, as a result of this agreement, Parks & Recreation Director Roderick Simmons said that he will work with the Economic Development staff on performance measures regarding the behavior in and use of Pritchard Park and report that to Council quarterly.

Councilwoman Cape moved to dissolve the Pritchard Park Committee. This motion was seconded by Councilman Mumpower and carried unanimously.

Closed Session

At 7:12 p.m., Councilman Mumpower moved to go into closed session for the following reasons: (1) to establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of contracts for the acquisition of real property by purchase, option, exchange or lease. The statutory authorization is contained in G.S. 160A-318.11 (a) (5); (2) to discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations, provided that any action authorizing the payment of economic development incentives will occur in open session. The statutory authorization is contained in G.S. 143-318.11(a) (4); and (3) to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including potential litigation. The

statutory authorization is contained in G.S. 143-318.11 (a) (3) This motion was seconded by Councilman Russell and carried unanimously.

At 7:35 p.m., Councilwoman Cape moved to recess the closed motion to return to the formal meeting, noting that the closed session would continue at the end of the formal meeting. This motion was seconded by Vice-Mayor Davis and carried unanimously.

C. DIRECTION FOR NEXT STEPS IN THE CITY-OWNED PROPERTY REQUEST FOR PROPOSALS PROCESS

Economic Development Director Sam Powers said that this is the consideration by City Council of direction for next steps in the City owned property Request for Proposal (RFP) Process.

He explained the recent activities completed include (1) RFP issued to pre-qualified developers [Dec 2007]; and (2) Proposals received and evaluated [Feb/March 2008].

City Council and staff have engaged in a Request for Qualifications/Proposals (RFQ/RFP) for potential redevelopment of city owned/controlled property for the past 24 months, most recently culminating in the receipt of Developer Proposals for 2 of 3 sites offered during Phase II of the process.

Regarding the Strategic Operating Plan, the RFP process addresses multiple goals of the 2008-09 Strategic Plan. Specific goals include: (1) Promote sustainable, high density infill growth that makes efficient use of existing resources; (2) Develop and implement the comprehensive affordable housing plan and proactively pursue strategies, including completing the city-owned land redevelopment process, to increase the supply of workforce housing; (3) Support diversified job growth and small business development; (4) Reduce energy consumption in privately owned buildings; and (5) Increase downtown cleanliness and beautification efforts.

Pros:

- Provides reinforcement to the RFP process
- Proposals meet multiple Council Goals
- Proposals meet multiple goals of 2025 Plan
- Job creation (construction and permanent)
- Proposals received are consistent with Asheville's moderate, stable growth market
- Proposals received are in the small to mid-scale range

Cons:

- Extends the time frame for possible work force housing at Parks Maintenance site.
- Extends the time frame for redevelopment of Eagle/Market and Parks Maintenance sites.
- Cost-benefit of relocation of municipal facilities.

There is no immediate impact. Intermediate and long term impacts include:

- Tax base enhancement by returning Haywood Street and Parks Maintenance Sites to private sector.
- Substantial cost recovery of acquisition costs of Haywood Street properties
- Lease cost of re'ocated parks maintenance which will include app. 10% equity discount for the city's interest in the property.

City staff requested City Council grant approval to move forward with recommended next steps which will be outlined by Mr. Mark Taylor, Vice-President & COO of Real Estate Research Consultants, as outlined.

Mr. Taylor reviewed with Council the following proposals:

Eagle-Market Street Properties - Eagle-Market Renaissance, LLC (1) mixed-used, 10-story multi-family residential with street-level commercial; (2) intensified use of existing site; (3) 46 for sale housing units (13% workforce housing); (4) 3,600 – 7,500 sq. ft. of retail/office; (5) limited on-site parking spaces; (6) historic preservation of building facades (sustainable); (7) anchors cultural heritage district; (8) African American development team; (9) Eagle-Market Street Development Corporation (EMSDC) directly involved in developer discussions; (10) sustainable job creation; (11) business incubator space; (12) equity partnership between EMR and EMSDC; (13) desire to use Section 108 and Community Development Block Grant (CDBG) funds; (14) local business involvement; and (15) enhanced tax base.

He showed a picture of preliminary massing studies for the Eagle-Market Street site.

Haywood Street Properties at Civic Center – McKibbon Hotel Group, Inc. (1) mixed-used, 9-story hotel with street level commercial; (2) intensified use of existing site; (3) 140 hotel rooms (upscale: Marriott, Hilton or Starwood band); (4) 13,500 sq. ft. of retail/office; (5) integrated 350-space public parking garage; (6) green building, LEED certified (sustainable); (7) public art (local artists); (8) public hardscape for trail marker; (9) sustainable job creation; and (10) enhanced tax base.

McKibbon Hotel Group Inc. proposed terms (1) $1.76 Million acquisition price for land and hotel and commercial space (consistent with market value indicated by 2007 City appraisal); (2) City would retain ownership of land for garage; (3) developer will build and sell parking garage to City; and (4) developer will lease 150+/- parking spaces long-term for hotel and commercial uses.

He showed a picture of preliminary concept for the Haywood Street site at Civic Center.

Park Maintenance Properties (1) no proposals received by 2/29/08 deadline but continuing interests; (2) market update (a) no shortage of workforce housing demand; (b) impact of foreclosures on financing; and (c) tightened credit markets, 10-16 months for financial markets to stabilize (ULI expert panel); and (3) remains optimal site for workforce housing product due to cost basis of land and consistency with neighborhood master plan.

Next Steps: Staff is recommending the following next steps as outlined below.

- Eagle-Market Street Properties: Work with Eagle/Market Street Development Corporation (EMSDC) to seek additional detail from EMR regarding equity partner and financials prior to making a recommendation with regard to entering negotiations.

- Haywood Street Properties at the Civic Center: Enter into negotiations with McKibbon Hotel Group to draft a development agreement for City Council review and approval.

- Park Maintenance Properties: Monitor market conditions, continue due diligence and dialogue with interested developers to produce successful outcome.

Councilman Newman moved to support the next steps outlined by staff. This motion was seconded by Vice-Mayor Davis.

Mr. Darryl Hart, Chair of the Eagle-Market Street Corporation, thanked Council for letting them be involved in the RFQ/RFP process. They believe the team on the Eagle-Market Street redevelopment is a good team and brings a unique prospective to the community. As we embark upon this project, he asked for a commitment from Council to finish this project.

Mr. W. Louis Bissette Jr., attorney representing McKibbon Hotel Group, Inc., spoke in support of staff's recommendations that the City enter into negotiations with McKibbon to draft a development agreement for Council's review and approval. He said McKibbon is not new to Asheville as they have been here since 1996. It currently operates the Spring Hill Suites and the Courtyard by Marriott. These two properties have an annual payroll now of about $1 Million and they pay annual taxes in excess of $600,000 locally. He felt this is a good process and that their project meets Council's goals. He said that the project is basically a purchase from the City at market value for construction of a hotel, some office and retail space and a 350 space parking garage.

Mr. Wes Townsend, Vice-President of Acquisitions from McKibbon Hotel Group, used a chart to show the fiscal impact, including this project, from McKibbon in the Asheville area. The chart shows total taxes of approximately $1.4 Million per year and the payroll dollars are almost approximately $2 Million. He also showed Council a report of the Asheville hotel market.

The following individuals spoke in support of Council proceeding with the staff recommendation on the Eagle-Market Street properties for various reasons, but mostly for the growth and development in terms of diversity and historical legacy of Eagle-Market Street area:

Ms. Sylvia Farrington, lead principle with Asheville Global Services Group and member of the Eagle Market Renaissance Development Team
Ms. Tayani Suma, President of Mission Redevelopment Inc. (presented Council with examples of Mission Development Projects)
Mr. Sherman Goldwin, representing EM Johnson Interest, Inc. (presented Council with information on EM Johnson Interest, Inc.)

The following individuals spoke in support of Council proceeding with the staff recommendation at the Haywood Street Properties at the Civic Center for various reasons, but mostly for the addition of parking spaces:

Mr. Bill Leonard, business owner in the Grove Arcade
A manager of a store in the Grove Arcade
A business owner in the Grove Arcade
Ms. Roslyn Whitley, business owner in the downtown area
Ms. Ruth Summers, employee in the Grove Arcade (presented Council with a "Parking Petition" containing over 177 signatures requesting the City build or allow to be built a parking facility or deck on the Battery Park side of the Grove Arcade
Ms. Karen Kennedy, Director of a gallery in the Grove Arcade
A downtown business owner

Ms. Donna Bateman questioned what impact the project at the Civic Center will have on Battery Park Apartments, the Basilica of St Lawrence and the newly renovated Vanderbilt Apartments. In addition, she noted that Park Avenue is very narrow.

Mr. Matt Mores, representing the Basilica of St. Lawrence, said that the Basilica is against any large structures diminishing the view of the Basilica and potentially damaging the 100 year old building that is a historical landmark of the City. They have been pursuing this issue with the City for over eight months and at this point they are hoping the City would have made a decision on their own to postpone this RFP process. An intensified use is the wrong use in front of a Basilica. Again, they are against any large structures diminishing the future view between the Grove Arcade and the Basilica. He has currently put the AT&T site under contract and they are finalizing the agreement to bring 1.5 - 1.67 acres to this corridor for the City to build a parking deck. He believed the best use in front of the Basilica with its historical value would be a plaza and a more open concept with less invasive encroachment of the Basilica.

Councilwoman Cape's main concern is that the City is just about ready to start a master planning process for downtown Asheville. She felt any action on City property should be held off for this month to let the citizens participate in this process about what they want for downtown. After reviewing City Council meetings on video tape, a lot of what Council talked about regarding City-owned property is the fact that it wasn't just a matter of selling the property, but achieving the highest strategic values for our community. She urged Council to consider at least allowing City-owned property be included in the master planning process for downtown.

Councilman Mumpower felt that the City has invested well over $200,000 and narrowed the potential 9 pieces of City-owned property down to two. He felt this has been a tremendous misinvestment of City tax dollars. The problem is that the majority of Council seeked to sell City-owned property and developed guidelines for that purpose. Then Council asked people to come to Asheville and develop those properties. His concern is that staff and potential developers did what Council asked and now Council tells them we have a new planning process. Even though he voted against this process, he felt he felt that the City should at least honor the process and work with the developers to bring their projects to life.

Councilwoman Cape said that Council has had many conversations about how the RFP process will fit into the downtown master planning process. Many times she heard Council say that just because we're getting ready to go through the RFP process does not mean that at the end of the process whatever gets in front of Council gets approved. She didn't think we are changing the rules along the way. The City spent two years going through this process and postponing it for two months will not slow down the Eagle/Market Street properties, as more research is required, nor the Haywood Street Properties, because of drafting a development agreement. She felt we needed to be more comprehensive with our planning process and see how the pieces work together so one process doesn't goes forward while cutting off another one. She did not think Council has been unclear in the process to date.

In response to Councilwoman Jones, Mr. Powers said that what is key from a staff prospective is do the proposals meet enough of Council's strategic goals to move into the next phases - McKibbon hotel negotiations and more due diligence on the Eagle/Market Street properties. Regarding the Haywood Street properties, staff is still determining price in terms of fair market value and other due diligence items. There is fairly comprehensive negotiation process that will continue which might take several weeks based on past experience. The challenge is those negotiations moving forward in conjunction with the Downtown Master Plan. It's not implausible that the timetable could work together. But quite honestly, part of the timetable hinges on the developers who submitted the proposal. They are the ones who will determine how much more time and energy they feel is in their best interests to commit as the City determines its best interests.

City Attorney Oast said that the City is not bound to sell their property until a contract is signed, but the risk is the same developers tonight with proposals in hand may not be here when the master planning process is complete. Since City does own the properties, they have the choice about whether to wait on the Downtown Master Plan or not.

Vice-Mayor Davis felt that the Eagle/Market Street properties plan is a nice proposal and he was appreciative to have that group at the table. Regarding the McKibbon group, he felt they have met the criteria and have come to Council with a product that achieves Council's goals. He didn't see how proceeding with this process would be in conflict with the Downtown Master Plan.

In response to Councilwoman Cape, Mr. Taylor explained the timeline for negotiations moving forward as it relates to the Downtown Master Plan, noting that they have worked closely with the downtown master planning team. In fact, they interviewed more than 30 stakeholders at the beginning of the process last March, and many of them are in that process as well. Even though the downtown master planning process started a little late, expectation is that this summer they will have preliminary findings for the Master Plan. He felt it's a balance that you have to

strike between planning indefinitely or proceeding with a $37 Million private development. It may not be the people you decide to go forward with, but they are interested and are willing to invest in the community plus they live here. Again, they are trying to be consistent with the downtown master planning process, and he didn't see a contractual agreement being in front of Council before some preliminary work has been done this summer on the Master Plan. Per the RFP timetable, the development agreement is to be brought back to Council for consideration in August of this year.

Mayor Bellamy said when this was originally brought up for City-owned land to be considered for this type of initiative, one of the main reasons was affordable housing. The goals were expanded by Council as the Council's minutes of the May 22, 2007, meeting read: "The City's goals and objectives are (1) workforce housing; (2) enhanced tax base; (3) smart growth; (4) realistic market opportunities; (5) attract innovative developers; (6) path to redevelopment next 2 to 4 years; (7) focus City efforts to be results-oriented; (8) transparent process; (9) best use of public assets; (10) economically and environmentally sound; (11) potential public space; (12) involve local businesses; (13) support City's Minority Business Plan; (14) cost-benefit of relocating municipal facilities; (15) limit impact on taxpayers; and (16) promote live-work-play downtown."

Mayor Bellamy said that in addition, from the May 22, 2007, minutes that were formally adopted, a portion reads "Councilman Mumpower didn't think it was fair to put out RFQ's unless we can provide reasonable assurances to the developers that will allow them to do what we are proposing the options are. He supported moving forward, but only with the understanding that we are going to be good partners and try to bring them to life. Councilman Newman asked for financial information on the cost of building a new Transit Operations Center and the costs associated with the relocation of such a facility. He also asked for more detailed information on what properties the City actually owns around the Civic Center. In response to Mayor Bellamy, Mr. Taylor explained the timeline for proceeding with Phase Two. After a brief discussion, Councilman Newman moved to approve the issuance of the RFQ for the Eagle-Market Street properties. This motion was seconded by Councilman Freeborn and carried unanimously. After a brief discussion, Councilman Mumpower moved to approve the issuance of the RFQ for the Haywood Street properties at the Civic Center, subject to the City functioning as a good partner in this process. This motion was seconded by Councilman Davis and carried unanimously. Vice-Mayor Jones confirmed that being a good partner doesn't mean that the City has to agree to what a developer proposes. The City is not a bad partner if we don't accept a project. Councilman Freeborn moved to approve the issuance of the RFQ for the Office of Economic Development. This motion was seconded by Councilman Mumpower and carried unanimously. Councilman Newman moved to approve the issuance of the RFQ for the Park Maintenance properties. This motion was seconded by Councilwoman Cape and carried unanimously." She explained that she is mentioning this to show what has happened to get us to where we are today. She read the following process, which part of it began January 20, 2006, into the record as follows: January 20, 2006 (City Council retreat - Agenda Item: Individual Council Member's goals); February 21, 2006 (City Council Worksession - Agenda Item: Follow-up from City Council's Retreat); March 1, 2006 PED meeting (Agenda Item: City-owned property - the Block); April 12, 2006 PED meeting (Agenda Item: Eagle/Market Street Redevelopment); April 18, 2006 (City Council Worksession - Agenda Item: Planning & Economic Development Committee); June 14, 2006 PED meeting (Agenda Item - Agenda Item: Eagle/Market Street Redevelopment); July 18, 2006 City Council meeting (Agenda Item: City Land Redevelopment and Facilities Planning); September 13, 2006 PED meeting (Agenda Item: Eagle/Market Street Redevelopment); October 11, 2006 PED meeting (Agenda Item: Staff Analysis of Eagle/Market Street Redevelopment Proposal); October 24, 2006 City Council meeting (Agenda Item: Resolution to Commit Federal and Loan Grant Funds for the Redevelopment of Property on Eagle and Market Streets); November 14, 2006 City Council meeting (Agenda Item: Addition of Properties on Eagle and Market Streets to the Larger City-owned Property Initiative Requests for Qualifications); November 21, 2006 City Council Worksession (Agenda Item: Request for Qualifications for Disposition of City-owned Property in the Downtown Area); February 13, 2007 PED meeting (Agenda Item: Request for Qualifications

for Development of City Properties); May 9, 2007 PED meeting (Agenda Item: Update on City-owned Property, Phase II; May 22, 2007 City Council meeting (Agenda Item: Resolution authorizing the issuance of the Request for Qualifications); July 24, 2007 City Council meeting (Agenda Item: Progress Report on the Redevelopment Plan for City-owned property); August 15, 2007 (certified letter mailing to property owners within 500 feet); August 21, 2007 City Council Worksession (Discussion of Council Goals and Criteria for the City-owned Property Request for Proposals); August 30, 2007 (mailing to adjacent property owners); September 6, 2007 (Public information open house); September 12, 2007 PED meeting (Agenda Item: City-owned Property Process Update); October 1, 2007 (Request for Qualifications stakeholder meeting); October 2, 2007 (Request for Qualifications stakeholder meeting); October 3, 2007 (Request for Qualifications stakeholder meeting); October 10, 2007 PED meeting (Agenda Item: City-owned Property Request for Qualifications); November 20, 2007 City Council meeting (Agenda Item: Informal discussion and public comment); January 9, 2008 PED meeting (Agenda Item: City-owned Property Process Update; and February 19, 2008 City Council meeting (Agenda item: Resolution Authorizing the City Manager to Amend an Agreement with Real Estate Research Consultants." She read those dates into the record to show that each meeting was noticed, open to the public and public input was allowed. To say that we have not integrated the public into this process is flawed. We certified the mailings to property owners to ensure their inclusion in the process if they wished. To say that we have not looked at the Downtown Master Plan as part of this process is also flawed as specific Council members have brought up several times during the course of the discussion. Council knew they were adopting this process as part of the overall initiative to meet Council's goals. Her only question is how much of that land ($1.75 Million) on the Haywood Street properties is going towards affordable housing. Council originally said when they were looking at the process that affordable housing was the goal. She wanted a commitment to affordable housing that we will see a large share of that money go for affordable housing in our community. The proposal for the Eagle/Market Street area has been vetted into the community. We have been open and transparent in every step of this process. All of Council didn't agree on every step, but to start the Request for Qualifications process, the prior Council unanimously approved the Request for Qualifications process for this to move forward.

Since this matter has had over 20 minutes of debate and every Council member has been asked to speak once, Councilwoman Jones moved to call the question. This motion was seconded by Councilman Newman and carried on a 5-2 vote, with Mayor Bellamy and Councilman Mumpower voting "no."

Councilman Mumpower felt the motion to call the question is an effort by Council to suppress discussion of Council actions. He believed that in shortcutting this conversation is setting up additional opportunity for abuse of dollars.

The original motion made by Councilman Newman and seconded by Vice-Mayor Davis to support the next steps outlined by staff carried on a 5-2 vote, with Councilwoman Cape and Councilman Mumpower voting "no."

As we move forward, Councilman Newman moved to give direction to the City to (1) emphasize the creation of affordable housing as Council is willing to utilize some of the proceeds of the sale of properties where we can't create affordable housing to invest in the creation of affordable housing on some of the other properties; and (2) explore ways to create a modestly sized civic space between the new development and the Basilica. He supported the public parking, green building aspects of the projects, recouping the taxpayer's investments in these properties, and putting the land back on the tax rolls, noting that a lot of design work still needs to be done. When he looks at some of the projects the McKibbon group has done in historic downtown areas, he was impressed. He believes there is opportunity for great design outcomes in this as well. He agreed with Mayor Bellamy that one of the things we are not seeing is affordable housing. He wanted to support the idea that as we negotiate around the various properties that we utilize some of the investments from the Haywood Street properties to look at ways to further incentivize affordable housing where it is best suited. Because Council has talked

about how the Basilica is one of the most beautiful architectural significant building inside the City, and while he supports the development concepts, there may be some very good opportunities to create some beautiful public space between a new development and the Basilica. And, we will continue to work with neighboring property owners and the community at large to really look at ways to create a modestly sized civic space. He hoped those opportunities will be explored. This motion was seconded by Councilwoman Cape.

Councilman Mumpower felt Council is being arbitrary by adding other layers to the RFQ/RFP process and he felt it is wrong.

Councilwoman Cape wanted staff and the City Manager to recognize that City Council members are amateur representatives of the citizens of this community and they don't walk in with the knowledge bank that City staff has. For example, several times over the years Council has said that they would be willing to incentivize the property or subside the property or sell it at a loss, but not until this week did she learn that there was a legal North Carolina law that prevented the City from selling properties at less than market value in order to achieve strategies. That would have been helpful to have known. Therefore, she offered a friendly amendment to Councilman Newman's motion that City staff does a better job of letting City Council where they are not giving clear direction. City Council also needs to make sure they are giving clear direction. She heard over and over that a hotel is not our highest and best use for the Haywood Street properties site. All the time when Council is told that we have to go along with the development because these people are spending so much money on interest on their land - this is a City-owned land and we aren't paying that much interest on that land. She did not know a single developer who doesn't take the risk to try a project periodically and maybe not go through with the project.

The friendly amendment made by Councilwoman Cape to Councilman Newman's motion was accepted by Councilman Newman.

Councilwoman Jones was pleased to move forward on the Eagle/Market Street project and she was excited about the potential for the park maintenance properties. She did have some concerns regarding the Haywood Street properties and will discuss those with the developer. Personally, she does think they have incorporated some tremendous strategic goals that are worthy of consideration, but as a steward of the property of the citizens, this is a process. As we move forward, her support is not a formal vote for the development agreement. There have been some bad things said about the process, but she can see some positives that can unfold.

Vice-Mayor Davis said Council has good intentions and he would like to know that this is the beginning of another phase in the process. He too wasn't aware that the City can't discount its land to achieve their goals. He hoped we can do innovative things, e.g., a ground lease.

Councilman Mumpower encouraged the developers to proceed with great caution so they are not set up for failure. He stressed that Council has not heard from the people who are very much anti-development.

Mayor Bellamy wanted to be clear to both developers that her request is for affordable housing. She is not asking the developer to put affordable housing in the hotel, but is asking Council to keep their commitment for affordable housing in this process.

Mayor Bellamy moved for a friendly amendment to Councilman Newman's amended motion instructing the to write a letter to the Basilica asking them to consider a true public/private partnership with the City of Asheville of their annex building and the parking they own next to the Battery Park for a nice green space. Councilman Newman and Councilwoman Cape both accepted the friendly amendment.

Mayor Bellamy then responded to an earlier question asked about how the McKibbon proposal affects Battery Park and the Vanderbilt Apartments. It doesn't. It's no longer a desire to have a building right next to the Battery Park Apartments.

The twice amended motion made by Councilman Newman and seconded by Councilwoman Cape carried on a 6-1 vote, with Councilman Mumpower voting "no."

At 9:17 p.m., Mayor Bellamy announced a short break.

D. BIKE ACTION PLAN SHORT-TERM STRATEGIES

Director of Transportation & Engineering Cathy Ball said that this is the consideration of staff plan to proceed with implementation of the City of Asheville Comprehensive Bicycle Plan, adopted February 26, 2008.

Ms. Ball explained the overall implementation strategy includes the following: (1) continue public participation; (2) budget for specific projects each year as well as for placeholder projects that can take advantage of other activities; (3) coordinate with other City of Asheville plans and projects; and (4) seek outside funding, but do not rely on such sources of funds for all projects.

Short-term plan: (1) bicycle lanes (a) Asheland Avenue; (b) Broadway (north of I-240)*; (c) Coxe Avenue; (d) Haywood Road (from Riverside Drive to Beverly Road West)*; (e) Hilliard Avenue; (f) South Charlotte Street*; and (f) Southside Avenue*; (2) shared lane markings (a) Charlotte Street (north of I-240); (b) Haywood Road (in downtown West Asheville)*; (c) Chestnut Street; (d) Montford Avenue; and (e) South French Broad Avenue; and (3) climbing lanes (a) Clingman Avenue; and (b) Lexington Avenue. * = NCDOT - maintained

She reviewed a chart that indicated the estimated fiscal impact of implementation of the plan's short term recommendations.

Regarding the Strategic Operating Plan, implementation of plan recommendations supports the green city strategic operating plan goal of promoting emissions-reducing transportation options.

Pros:

- Improves bicycle transportation system in Asheville
- Begins visible implementation of the adopted plan
- Provides a mixture of strategies for improving bicycling conditions

Cons:

- Involves expenditure of funds
- Delays immediate improvements on NCDOT-maintained streets and roads

Staff's recommendation is as follows: (1) Staff would recommend that we implement the installation of twenty bike racks in the Rankin Avenue Parking Garage (or other locations) from the Parking Enterprise Fund. (We will be applying for a grant that may cover this cost.) The cost for this project would be $25,000 and a fee would be charged to recover some of the costs. Staff also recommends that the climbing lanes on Lexington Avenue be installed at a cost of $18,000 and the shared lane markings on South French Broad Avenue for $10,000. The money from this project would come from the managed savings in the Transportation and Engineering Department; (2) Implement the projects as current funds allow; and allocate funding in Fiscal Year 2009 and subsequent year budget for remaining projects on both city-maintained and NCDOT-maintained roads; or (3) Some hybrid of (a) and (b), allocating additional funding for one or more projects this year, and subsequently granting funding and budget authority for continuing improvements recommended in the plan, pursuing both stand alone projects and opportunities

presented by city resurfacing programs; (3) pursue policy changes; (4) seek early involvement with repaving and other projects, both with Public Works and with the N.C. Dept. of Transportation; and (5) make sure the Bicycle Plan is made available and considered in other planning efforts.

Upon inquiry of Vice-Mayor Davis, Ms. Ball said that we would not lose any parking spaces.

Mr. Michael Soule, representing the cycling community, asked Council for their continued investment.

Mr. Fred English felt that since our citizens can't afford this, especially with the budget deficit this year.

Ms. Ball responded to Mayor Bellamy's questions relative to where the funding was coming from for the short-term recommendations and coordinating activities to correspond with N.C. Dept. of Transportation and Public Works projects.

In response to Mayor Bellamy, Ms. Ball said that there is coordination to use this opportunity to stripe Kimberly Avenue.

Councilman Mumpower felt that Council did adopt a Bicycle Plan and we need some responsible effort to implement that Plan; however, he disagreed with the timing of the efforts due to our budget deficit this year.

Councilwoman Cape was supportive of this effort. Many bicyclists spend a lot of money on their bicycles as their vehicle and providing a locker for them in a climate where we are moving toward $4.00 a gallon for gas could be a good thing to do for our community. We spend $20,000 for a parking space for cars and we make these investments all the time. She was excited we might find a grant for the lockers and if not, she liked the idea for them to be rental lockers. Since parking spaces take 25 years to recoup the money, the City could recoup their money for the lockers in 5-7 years. She liked staff looking ahead so we can piggy-back these re-pavings on projects in order to save significant amount of money.

Councilwoman Jones moved to approve the Bicycle Plan's short-term recommendations. This motion was seconded by Councilman Newman and carried on a 6-1 vote, with Councilman Mumpower voting "no."

E. RECONSIDERATION OF TRAFFIC CALMING MEASURES ON MAXWELL STREET

Mayor Bellamy asked that this item be placed on Council's agenda since we have heard time and time again from the residents affected by truck traffic on Maxwell Street. She wanted Council to reconsider some opportunities to mitigate the large truck traffic that drive through Maxwell Street and allow us to look at options that are available to us since we are not hearing much movement for reconfiguration of current Greenlife property.

Assistant Director of Transportation and Engineering Ken Putnam briefly reviewed the following report he presented to Council on August 28, 2007, as follows:

Greenlife Grocery is currently served by two loading dock areas, one with a direct access onto Maxwell Street and one with access on-site. Although, the larger trucks that use the on-site loading dock area arrive and leave via US 25 (Merrimon Avenue), they typically use part of Maxwell Street to maneuver into position. In addition, the smaller trucks that access the loading dock area with the direct access onto Maxwell Street typically stage along Maxwell Street to wait

their turn to maneuver into the loading dock area. Some of the drivers of these trucks will go ahead and unload before they can maneuver into the actual loading dock area.

A conceptual traffic calming plan has been prepared to minimize truck activity along Maxwell Street. It should be noted that if this plan is approved to move forward to the design and construction stages, it will be crucial to accommodate emergency *(fire and ambulances)* vehicles as well as sanitation vehicles *(private and city)*.

The conceptual plan includes four options; specifically, a *"blocking"* option and three *"restricting"* options. These options are further described as follows:

1. The *"blocking"* option is the most restrictive since it would revise the existing access point onto Maxwell Street to serve right turn egress movements only and it would prevent the larger trucks from using Maxwell Street to maneuver into the on-site loading dock. Although the smaller trucks would still be able to use Maxwell Street to gain access to the loading dock area that has direct access onto Maxwell Street, their movements would be restricted due to the proposed islands. The estimated cost to construct this option with City forces is $35,000 to $40,000.
2. Option A, which is one of the *"restricting"* options, would enable the larger trucks to use Maxwell Street to maneuver into the on-site loading dock but it would prevent these trucks from using Maxwell Street to enter or leave the immediate area. The effect on the smaller trucks trying to access the loading dock area with direct access onto Maxwell Street would be the same as in the *"blocking"* option. The estimated cost to construct this option with City forces is $25,000 to $30,000.
3. Option B, another *"restricting"* option, is very similar to Option A and it would produce the same results as Option A. It uses a different island treatment on the eastern end of Maxwell Street. The estimated cost to construct this option with City forces is $25,000 to $30,000.
4. The third "restricting" option is the least restrictive and it simply uses additional on-street parallel parking to restrict truck traffic. The estimated cost to construct this option with City forces is less than $1,000.

Mr. Putnam said that he felt for the most part the large trucks do come in off Merrimon Avenue through the Greenlife property, pull out into Maxwell Street and back into the loading dock itself. That is the area we have restricted parking on one side of the road. In September, at Council's direction, staff adding two parking spaces on the side of the road next to Greenlife Grocery, between the loading dock and the driveway entrance just north of that. We kept these spaces in place for about one month and were notified that GDS (Greenlife's private trash hauler) was having difficulty in backing into the loading dock to empty the dumpsters. Our Sanitation Division spoke with GDS to see if there would be a way to accommodate their concern. The best course of action was to remove the two parking spaces just put in. We also added a sign that prohibited anyone from loading or unloading a vehicle from that spot. He travels out there at least once a week and he has never seen a truck now parked in this area. He couldn't say that it doesn't happen on occasion, but he has not witnessed it. He met with GDS today to see if we could put back one of the parking spaces and they are in full agreement. Right now GDS comes off Merrimon, through the Greenlife parking lot onto Maxwell, and then they back all the way down into the loading dock. An option for GDS is allow them to go in along Marcellus Street.

Vice-Mayor Davis was concerned that the GDS trucks come early in the morning and when they back down Maxwell Street, it's probably noisy for the neighbors due to the beeping.

Mr. Putnam felt it would be the least disturbing to the neighbors for GDS to come off of Marcellus, swing around and then back in. That way their backing exposure would be less. He said that effectively just recently GDS has changed the delivery to service the two dumpsters only once a week.

Councilwoman Cape was concerned that we might be replicating problems for the people on Marcellus Street and wondered if we could ask GDS not to come before 6:00 a.m. for this one specific area.

Mr. Putnam said he would at least ask GDS not to come early. He said that on one side of Marcellus the property is zoned Community Business II and on the other side is Neighborhood Corridor District. City Attorney Oast said it sounds to him like there is no residential component on either side of Marcellus Street.

Mayor Bellamy said it seems like we have gotten the large trucks off Maxwell Street and asked Council if they would be supportive of (1) allowing GDS to use Marcellus to cut down on the amount of back-up noise; (2) putting back one parking space; and (3) asking GDS to not service the area before 6:00 a.m.

Mr. Putnam then responded to Councilwoman Cape's questions regarding five additional parking spots and truck hoods sticking out of the loading dock onto the sidewalks.

Councilwoman Cape moved to put back one parking space. This motion was seconded by Councilwoman Jones.

Mr. Fred English felt the problems on Maxwell Street could be addressed with additional police officers. In addition, he felt that Greenlife should be forced to move their loading dock.

Ms. Brandy Boggs, Maxwell Street resident, noted that Maxwell Street has already lost a minimum of 8 parking spaces and the four options above will mean more loss of parking spaces. She felt Council is only dealing with the symptom of the problem which is traffic on a residential street - not the root, which is Greenlife Grocery. Long-term Council must address the issue of the location of the loading dock. She felt the one parking space to be added will be used by Greenlife patrons. In addition, the new Pioneer Building is already two spaces short and they will park on Marcellus Street. She said that GDS should not be allowed to back down Maxwell Street because they come between 6-7:00 a.m. every Thursday morning and it takes them 2-4 hours to empty the dumpsters leaving the stench for hours. She felt the City is using taxpayer dollars to address corporate neglect. She asked that the Police officers be consistent in ticketing, whether it be truck drivers or residents. She felt a solution would be to invite the community, Greenlife and the Traffic Engineer to work through the concerns.

Mr. Reid Thompson, Maxwell Street resident, said that in 2004 he was told by John Swann that "the Mayor is my attorney and it's going to be this way from now on and you better get used to it." He said that on October 18, 2005, five members of Council were involved in a closed session meeting which lasted from 9:07 p.m. to 10:20 p.m. Charles Worley was in that closed session meeting. He felt the real issue is what has gone on behind closed doors. He asked how could he get one hour with Council behind closed doors because Greenlife's representative had that. He said that the Unified Development Ordinance was adopted in 1997 and questioned how the City could grandfather something that was built in 2004. He cited a report that said the plumbing, electric and refrigeration was 80% of the cost. That means they added 2,000 square feet to the building and they renovated the entire building for less than $2.00/sq. ft. He maintained that those numbers are not realistic. He felt the way to solve a problem is to issue a notice of violation.

In response to Councilman Mumpower, Mr. Putnam said that it would be less than $100 to put the one parking space back in.

The motion made by Councilwoman Cape and seconded by Councilwoman Jones carried unanimously.

Mayor Bellamy said that she has made a formal request to Mr. Swann for a list of their vendors so we can write a letter to them about driving on Maxwell Street.

Upon inquiry of Councilman Mumpower to stimulate movement by Greenlife, City Manager Jackson said that the City has contacted them via letter, phone call and staff has met with their representatives. He said that staff will continue to report to Council on this matter, with another update in one week. Staff is looking for Greenlife's design professionals to come forward with plans.

Councilwoman Cape maintained a poor planning decision got us into this mess and we want to make sure we are not duplicating this in the future. We have planning departments to be the eyes and ears of our citizens and as the process moves forward in hiring a new Planning & Development Director; this is an expectation that we have.

Mayor Bellamy said that Mr. Thompson spoke about the "Mayor." She was not sure whether former Mayor Charles Worley was the attorney of record for Greenlife at that time. She was not the Mayor.

F. RESOLUTION NO. 08-86 – RESOLUTION APPROVING THE CITY'S CONSOLIDATED ANNUAL ACTION PLAN WHICH ALLOCATES COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME PROGRAM FUNDS TO SPECIFIC PROJECTS FOR FISCAL YEAR 2008

Community Development Director Charlotte Caplan said that this is the consideration of a resolution approving the Consolidated Action Plan for Fiscal Year 2008-09 and authorizing the City Manager to enter into funding agreements to implement the Plan.

The City expects to have $1,427,076 in Community Development Block Grant (CDBG) funds and $1,366,938 in HOME funds to allocate for housing and community development activities in the fiscal year beginning July 1, 2008. The City's Housing and Community Development Committee and the Asheville Regional Housing Consortium have made recommendations for allocating these funds to 37 projects, throughout Asheville and the four-county Consortium area.

A summary of the draft Action Plan was published on March 23. A public hearing was held on April 8. With the end of the required 30-day comment period, staff asks that Council take action to approve the plan. The plan is due to be submitted to HUD by May 12.

The Plan directly addresses the following Strategic Operating Plan goals:

- Affordable: the Plan includes direct assistance for 206 affordable housing units Consortium-wide and will benefit over 5000 low-income Asheville residents in other ways that enhance their housing, economic opportunities, and quality of life.
- Green: most new housing development will meet at least Energy Star standards; also includes Transit improvements.
- Safe: sidewalk construction supports Safe Routes to School.
- Sustainable: supports infill housing development; partners with at least 18 non-profits, citizen groups, and other local government entities.

Pros:

- Allocates $2,794,014 in compliance with federal regulations, enabling the City to utilize these funds to benefit our community

- Reflects the carefully considered recommendations of the City's Housing & Community Development Committee and the Asheville Regional Housing Consortium
- Leverages other funding in the ratio of $3.23 for every $1 of CDBG and HOME funds

Con:

- It is not possible to fund all the applications received, and most of those funded will receive less than the amount requested.

The Action Plan is fully funded from federal CDBG & HOME entitlement grants, unused funds from previous completed projects, and estimated program income. New assisted housing units in Asheville will add at least $2,000,000 to the City's tax base.

Staff recommends approval of the resolution approving the Consolidated Action Plan for Fiscal Year 2008-09 and authorizing the City Manager to enter into funding agreements to implement the Plan.

Councilman Mumpower felt this was borrowed money that our children and grandchildren will have to repay and would therefore speak against the motion

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Cape moved for the adoption of Resolution No. 08-86. This motion was seconded by Councilwoman Jones and carried on a 4-3 vote, with Vice-Mayor Davis, Councilman Mumpower and Councilman Russell voting "no."

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G. RESOLUTION NO. 08-87 – RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT WITH JLS COMPANY, LLC, FOR THE PROJECT KNOWN AS GROVE PARK NEIGHBORHOOD TRAFFIC CALMING PROJECT

ORDINANCE NO. 3613 – BUDGET AMENDMENT FOR THE PROJECT KNOWN AS GROVE PARK NEIGHBORHOOD TRAFFIC CALMING PROJECT

Assistant Director of Transportation and Engineering Ken Putnam said that this is the consideration of a resolution authorizing the City Manager to sign a contract with JLS Company, LLC in the amount of $320,743, for the project known as Grove Park Neighborhood Traffic Calming Project; and the associated budget amendment.

This project generally consists of the construction of traffic calming devices/measures in the Grove Park Neighborhood. The traffic calming devices/measures include 14-foot and 22-foot asphalt speed humps, a mountable traffic separator, lateral shift islands, median islands, intersection re-alignments, signage, and bicycle lanes.

The Transportation & Engineering Department received and publicly opened one bid on Thursday, April 3, 2008 at 3:00 p.m. The bid was received from JLS Company, LLC in the amount of $320,743. After a thorough review of the bid documents by the Transportation & Engineering Department, JLS Company, LLC, was found to be the lowest responsible bidder with a total bid of $320,743. All contract work was solicited using the "informal bidding procedures" in accordance with State guidelines and as a result, there was no requirement to receive a minimum number of bids. Bids for this project were solicited on three separate occasions; with no bids received on the first occasion and a bid of $412,000 on the second occasion.

The total anticipated cost to complete the project including the sidewalk portion that will be accomplished by the Public Works Department is $474,950 and is itemized as follows:

Design	$49,157
Sidewalk Easements	$4,950
Traffic Calming Devices Construction	$320,743
Sidewalk Construction	$100,100
Total =	$474,950

The anticipated cost for the sidewalk construction is for material cost only since this work will be accomplished by the Public Works Department.

The project will primarily be financed with monies received from the Grove Park Inn as one of the conditions of approval for the Grove Park Inn Master Plan. As a condition of approval *(City Council Meeting on November 23, 2004)*, the Grove Park Inn agreed to submit a total of $375,000 to the City prior to any land disturbing activities occurring. This funding has been received by the City. The $4,950 in funding for the sidewalk easements will come from the current Traffic Engineering operating budget.

The remaining $95,000 in funding needed to complete this project will come from the budget amendment. Staff recommends transferring $15,000 in savings from the Yorkshire Street widening project, which has been completed, and $80,000 from the Patton Avenue pedestrian signals project, which will not be completed this year. The Patton Avenue pedestrian signals project was set up to coincide with the Patton Avenue sidewalk project and that project is still in the design and review stage, therefore the $80,000 for the pedestrian signals will not be needed this fiscal year. Funding for the Patton Avenue pedestrian signals will be requested in future capital improvement budgets.

JLS Company, LLC, has demonstrated in a satisfactory manner that she has satisfied all of the requirements as stated in the contract documents including evidence that she will adhere to the requirements of the City of Asheville's "DRUG FREE WORKPLACE".

The construction time for the project is identified as not more than 180 calendar days from the written notice to proceed as stated in the contract documents. The work to be performed shall commence from the written notice to proceed as stated in the contract documents. The contractor will be required to pay the sum of $250 as liquidated damages for each and every calendar day that he shall be in default after the time stipulated in the contract.

Pros:

- The execution of this contract will allow the City to move forward with one of the conditions of approval for the Grove Park Inn Master Plan.
- The execution of this contract will satisfy the wishes of the Grove Park Neighborhood community as indicated in the verified 60% petitions.
- The bid amount of $320,743 for the construction of the Grove Park Neighborhood Traffic Calming Project is equitable, as compared to the engineer's estimate of $201,683, considering current economic conditions.

Con:

- The only foreseeable disadvantage of adopting a resolution authorizing the City Manager to execute this contract is that up to 40% of the affected community members might be opposed to the recommended traffic calming devices/measures.

The total financial impact for the subject project is $474,950 including $375,000 provided by the Grove Park Inn, $95,000 from the budget amendment, and $4,950 from the current Traffic

Engineering operating budget. In addition, the Public Works Department will furnish labor and equipment to construct the sidewalk portion of the project along Macon Avenue.

Staff recommends that City Council adopt a resolution authorizing the City Manager to sign a contract with JLS Company, LLC in the amount of $320,743, for the project known as Grove Park Neighborhood Traffic Calming Project; and the associated budget amendment.

Ms. Linda Burgin, Grove Park Inn Neighborhood Association representative, spoke about the process since 2004 and supported the solutions. She asked for Council's support as well.

Councilman Mumpower felt that $500,000 for traffic calming for one neighborhood represents our traffic calming budget for 10 years, but Council did give their word and the neighborhood went through the elaborate traffic calming process, so he would support the motion.

Mayor Bellamy noted that the Grove Park Inn contributed $350,000 towards this effort because of their major renovation and expansion.

Councilwoman Cape wondered if Council would be interested in encouraging staff to look into best practices of combining traffic calming with stormwater mitigation.

Mayor Bellamy said that members of Council have been previously furnished with copies of the resolution and ordinance and they would not be read.

Councilwoman Jones moved for the adoption of Resolution No. 08-87. This motion was seconded by Vice-Mayor Davis and carried unanimously.

RESOLUTION BOOK NO. 31 – PAGE 160

Councilwoman Jones moved for the adoption of Ordinance No. 3613. This motion was seconded by Vice-Mayor Davis and carried unanimously.

ORDINANCE BOOK NO. 24 – PAGE 437

H. RESOLUTION NO. 08-88 – RESOLUTION ENDORSING LEGISLATIVE REQUESTS FOR THE 2008 SESSION OF THE NORTH CAROLINA GENERAL ASSEMBLY

City Attorney Oast said that this is the consideration of a resolution adopting the City's legislative agenda for the 2008 "short" session of the N. C. General Assembly

The 2007 N. C. General Assembly convenes for its "short" session on May 13. As pointed out in previous staff reports, there are limitations on the matters that are appropriate for consideration during that short session.

Based on the staff presentations on March 18 and April 15, and information received from Council, a resolution has been drafted with the following issues. Council may act on it all together, or consider it item by item.

1. Completion of action on HB 758 regarding the adjustment of the municipal boundaries of the Town of Woodfin and the City of Asheville.

   Councilman Mumpower moved to include this legislation in the legislative agenda. This motion was seconded by Councilwoman Jones and carried unanimously.

2. Support HB 274 and SB 1358, the "North Carolina Street Gang Prevention Act," and other legislation that will assist State and local officials in dealing with the troubling increase in gang activity in the State.

   Council unanimously supported including this legislation in the legislative agenda.

3. Support Senate Bill 1068 to increase the distribution to local governments of the sales tax on telecommunications and video programming services.

   Council unanimously supported including this legislation in the legislative agenda.

4. Support increased and appropriate funding of the State's criminal justice system, including, without limitation: additions to law enforcement, prosecutorial, and judicial personnel; improved facilities, including courts and detention facilities; improved programs for crime prevention and abatement, and post-conviction monitoring.

   Council unanimously supported including this legislation in the legislative agenda.

5. Support increased and appropriate funding of the State mental health service delivery system, including, without limitation: additions to State and local office personnel; improved facilities; and improved programs to provide assistance to persons suffering from mental illness.

   Council unanimously supported including this legislation in the legislative agenda.

6. Introduction or support of legislation that will permit local governments to prohibit smoking in public parks.

   Council unanimously supported including this legislation in the legislative agenda.

7. Introduction of legislation that will permit the City of Asheville to require that property with respect to which water service is requested be incorporated into the City, consistent with the laws of voluntary annexation in the State of North Carolina, or other reasonable limitation.

   Council unanimously supported including this legislation in the legislative agenda.

8. Introduction or support of legislation that would increase the age for compulsory school attendance to 18.

   By a vote of 6-1, with Councilman Mumpower voting "no", this legislation would be included in the legislative agenda.

9. Introduction or support of legislation to regulate or prohibit the sale, use and distribution of salvia divinorum.

   By a vote of 6-1, with Councilwoman Cape voting "no", this legislation would be included in the legislative agenda.

10. Introduction or support of measures to provide for the study of municipal incorporation, especially as to the thresholds (population density, level of development) for qualifying areas for incorporation, and the minimum level of urban services that municipal governments are expected to provide in order to qualify for incorporation.

    By a vote of 6-1, with Councilman Mumpower voting "no", this legislation would be included in the legislative agenda.

11. Introduction or support of legislation to monitor, track, and appropriately dispose of illegal firearms or firearms used in the commission of a crime.

Council unanimously supported including this legislation in the legislative agenda.

12. Support HB 933 ("Jessica's law") and other legislation to strengthen the laws protecting children from sexual predators.

Council unanimously supported including this legislation in the legislative agenda.

13. Mayor Bellamy asked that the issue of children's identify theft be included. She explained that parents use their children's names and social security numbers to get credit.

Council unanimously supported including this legislation in the legislative agenda.

City Attorney Oast said that the revised resolution will be transmitted to the members of the local delegation with appropriate supporting information, and we will, of course, supply additional information upon request or as we learn of it.

As other matters of interest come to Council or staff's attention, Council may take appropriate action to supplement this resolution. As always, informal communication with our legislators is strongly encouraged.

RESOLUTION BOOK NO. 31 – PAGE 151

VI. NEW BUSINESS:

A. CONSIDERATION OF MODIFICATIONS TO THE SOLID WASTE MANAGEMENT ORDINANCE TO BRING THE ORDINANCE UP-TO-DATE AND TO CONSIDER ALTERNATIVE ENFORCEMENT POLICIES TO FACILITATE MORE EFFECTIVE COMPLIANCE ACTIONS

Mayor Bellamy said that the modifications to the Solid Waste Management Ordinance will be revised on May 27, 2008.

B. ORDINANCE NO. 3614 – ORDINANCE ADOPTING THE FISCAL YEAR 2008-09 FEES AND CHARGES

Budget Director Tony McDowell reviewed with Council the list of the Fiscal Year (FY) 2008-09 fee adjustments that were proposed by staff and reviewed by the Revenue & Finance Committee. Staff is seeking Council's approval of this FY 2008-09 fee package, with any adopted changes to be effective July 1, 2008.

The Finance Committee met on March 13, 2008, and again on April 1, 2008, to review the FY 2008-09 fee adjustments proposed by staff. He reviewed the summary of the proposed fee changes along with the Committee's recommendations on each proposal. For the most part, the Committee endorsed the proposals made by staff, with the one key exception being the household recycling fee. Staff proposed reinstating the household recycling fee to a level that would provide 100% cost recovery for the recycling program. The Committee, however, endorsed keeping the fee at its current level, and recommended looking at the possibility of completely eliminating the fee in the future.

The chart below summarizes the additional revenue that is expected to be generated by the proposed fee adjustments. To facilitate final preparation of the FY 2008-09 revenue budget

projections, staff is seeking Council's approval of this fee package prior to the presentation of the Manager's FY 2008-09 Recommended Budget. Approval of the fee package now will also provide staff with more time to effectively communicate any changes to our customers prior to the July 1, 2008, implementation date.

The noted that staff is requesting that Council not consider the fees under the Fire Department. The Fire Department is working on revamping its inspection fees and staff will bring Council information in May with the budget.

Fund	Revenue Increase
Water Fund	$804,000
General Fund	$281,833
Parking Fund	$248,151
Festivals Fund	$64,476
Golf Fund	$96,000
Stormwater Fund	$18,600
Civic Center Fund	$16,000

Staff recommends that Council review the fee package and adopt the FY 2008-09 proposed fee adjustments.

Councilwoman Cape said that the recycling fee was brought up at the Sustainable Advisory Committee on Energy & the Environment. They were concerned that deleting the $400,000 recycling fee would really affect our ability to have some funds to spend on green initiatives. They sent a letter to Council asking that the recycling fee be reinstated, increasing it, or keeping it the same and utilizing some of that money for green initiatives or to offset some of Council's other strategic goals.

Councilwoman Jones felt this is not the year to eliminate the recycling fee entirely, but would support keeping the fee the same for regular household people. She believes that the citizens of Asheville deserve a little break. She hoped that Council will look at other fees where we can give Asheville citizens some relief.

Councilwoman Cape suggested that in the next year we look at our entire comprehensive waste/recycling efforts and see if we are really managing it appropriately. We have one of the best communities in terms of water conservation and recycling, so we need to review if we are giving them the kind of waste service they want and need.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilman Newman moved to adopt Ordinance No. 3614, to approve the fee package presented by City staff and keep the recycling fee at its current level. This motion was seconded by Councilwoman Cape and carried on a 4-3 vote, with Vice-Mayor Davis, Councilwoman Jones and Councilman Mumpower voting "no."

In response to Vice-Mayor Davis, Mr. McDowell explained what the transaction fee is under General Administration.

Vice-Mayor Davis felt the 4% water rate increase was reasonable.

Mayor Bellamy questioned the increase of 3-cents per CCF to wholesale customers compared to the increase of 13-cents per CCF to residential customers. She felt the wholesale rate increase should be similar to the residential and commercial customers. Councilman Newman responded that the Finance Committee agrees and they have asked Water Resources Director David Hanks to do some additional research on that specific question.

Mayor Bellamy felt that the City has been generous to wholesale customers for the last few years to the point of hurting commercial and residential customers and she believed it was time to change that.

Mr. Hanks said that all the contracts with the wholesale customers don't limit what the rate increase could be. It is Council's purview to change that rate. He would personally not recommend it at this time because we need to give them notice as they are in their budget process as well. City staff will be bringing back to the Finance Committee a more detailed analysis of the wholesale customer rate and a comparison of what other cities are doing throughout the state regarding their wholesale customers.

Mayor Bellamy supported the additional research on this issue.

Director of Transportation and Engineering Cathy Ball responded to questions raised by Vice-Mayor Davis regarding the Parking Fund.

Vice-Mayor Davis said that every year we go through the fee process and work hard to keep property taxes low. Ever year we see the fees being raised and felt that fees are taxes too.

Councilwoman Jones felt that these fees are user fees (getting something for their money) and people living outside the City are paying too. From the Finance Committee discussion, she thought the water wholesale rate was still being discussed and felt it sends the wrong message to our wholesale customers if we put a number out that may change. It is the same percentage increase but it assumes our current base is correct and that is what Council needs to feel like is right.

Councilwoman Jones moved to announce that the wholesale rates are to be negotiated. This motion was seconded by Councilman Newman.

Councilwoman Cape said that the wholesale customers are in the process of making their budgets as well and they need to know what the rate will be. She wanted to be mindful of the long term relationships.

Councilwoman Cape offered a friendly amendment to start looking at the wholesale rates in the fall and notify our wholesale customers in winter or early spring as to what the wholesale rate will be for the next fiscal year.

Councilwoman Jones felt that everyone, including the City of Asheville, adjusts to market rates. Gas and electricity go up and we have to modify. She wants to be fair.

Councilman Newman said that the motion doesn't mean that we will change the wholesale rates, but it just means that we want to be clear to them as soon as possible that this might be changing. He didn't know if we will be ready to do this in this budget cycle or not, but this is important and we need to let people know this is something on the table so they can be aware of that.

The motion made by Councilwoman Jones and seconded by Councilman Newman carried on a 4-3 vote, with Mayor Bellamy, Councilwoman Cape and Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 24 - PAGE 439

VII. OTHER BUSINESS:

Mayor Bellamy said that a lot of youth in our community would like to have a skating rink (ice and roller) in downtown and asked that the Civic Center Commission discuss that possibility.

Mayor Bellamy and Councilwoman Cape announced their short-term travel plans in which they would be representing the City of Asheville.

The following claims were received by the City of Asheville during the period of March 28 - April 17, 2008: Robert Weed (Water), Heather Loudermilk (Sanitation), Janice Gray (Water), Tony/Charlotte Boggs (Water), Chad Parker (Water), Saeid Dehkordi (Fire), Lisa Mathews (Water), John Berglund (Water), AT&T (Parks & Recreation), N.C. Dept. of Administration (Fire), James M. Pleasants Co. (Sanitation) and Lewis Calvin Young (Water). These claims have been referred to Asheville Claims Corporation for investigation.

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Rev. Christopher Chiaronmonte spoke about problems the homeless are encountering in Pritchard Park.

Ms. Donna Bateman spoke in support of the Pritchard Park warden and noted that the warden cites people for outrageous behavior in the Park or standing in the walkways.

Mayor Bellamy asked that wheelchairs be accessible to the podium. City Clerk Burleson said that she would make sure that the police officers direct wheelchairs to the front row.

Closed Session

At 10:58 p.m. Mayor Bellamy announced that City Council will continue with their closed session.

At 11:33 p.m., Councilwoman Jones moved to come out of closed session. This motion was seconded by Councilman Newman and carried unanimously.

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 11:33 p.m.

Magdalen Burleson
CITY CLERK

Terry M. Bellamy
MAYOR

Tuesday – April 29, 2008 - 5:00 p.m.
William F. Wolcott Jr., Public Works Facility
Asheville, North Carolina

Joint Meeting of the Asheville City Council and Town of Weaverville

Asheville Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; Councilman William A. Russell Jr.; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson (absent: Councilwoman Robin L. Cape)

Weaverville Present: Mayor Mary "Bett" Stroud, Presiding; Vice-Mayor Dottie Sherrill; Councilman Walt Currie (left meeting at 5:38 p.m.); Councilman Don Hallingse; Councilman Doug Jackson; Councilman Gene Knoefel; Town Manager Michael Morgan; and Town Clerk Shelby Shields

Mayor Bellamy welcomed the officials from the Town of Weaverville. She appreciated their willingness to meet with City Council and talk about their communities and ways they can help build up Buncombe County.

Mayor Bellamy and Mayor Stroud called their respective meetings to order.

Asheville City Manager Gary Jackson summarized Asheville Strategic Goals:

(1) Affordable: The City of Asheville will offer a standard of living that is affordable and attainable for people of all income levels, life stages and abilities.

- Complete the Comprehensive Affordable Housing Plan
- Citizen Task Force to present plan in summer 2008

- Support the Homeless Initiative as an internal city program
  - Increased communication and collaboration

(2) Green: Asheville will be the southeastern leader in clean energy and environmental sustainability while preserving and enhancing the city's natural beauty.

- Complete an internal Energy Management Plan for city facilities
  - Address conservation, technology and retrofitting, and strategic capital investments

- Complete the Parks and Greenway Master Plan process
  - Plan presented to Council in summer 2008

- Maintain downtown cleanliness initiative
  - Downtown cleaning crew and 7-day trash collection
  - Pritchard Park Ranger

(3) Safe: Asheville will be one of the safest and most secure communities when compared to similar cities.

- Pursuing Downtown Social Issues Task Force recommendation to form nuisance court
  - Meeting with local judges and district court representatives

- Support initiatives that curtail drug- and gang-related activity
  - 2 new gang detectives, 1 cyber detective
  - Community policing (South French Broad neighborhood success)
  - Additional police officers
  - 2 new fire stations

(4) Sustainable: Asheville will support a sustainable community and a sustainable city government through a strong commitment to infrastructure maintenance, capital improvements, long-term planning and fiscal responsibility.

- Develop strategic, multi-year capital plan
  - Launching capital planning effort in July 2008 to explore priority projects and funding mechanisms
  - Water line replacement project underway (funded by $40 million revenue bond)

- New Civic Center director introduced
  - Renewed commitment to customer service and deferred capital maintenance

He explained the following steps for completing the Downtown Master Plan:

- Kick-off Public Meeting
  Thursday, May 8 - 6-8:30 p.m.
  Asheville Civic Center Banquet Hall

- Community Education Session
  Friday, May 30 - 6-8 p.m.
  Location TBD

- Downtown Master Plan Workshop
  Saturday, May 31 - 10 a.m.-3 p.m.
  Location TBD

Weaverville Town Manager Michael Morgan summarized Weaverville's Strategic Planning Goals, starting with the Vision of the Town of Weaverville being: Weaverville will maintain its small town and neighborly atmosphere while actively managing the growth that is inevitable near a larger city. We will maintain Weaverville as a distinctive Town with a vital Main Street as its focus. Our town will be attractive to both young and old with a wide range of housing choices at a variety of prices. Neighborhoods and business areas are key building blocks of our community. We will reserve areas for both types of uses while buffering each from the other. We seek an attractive town that is well landscaped and accessible to pedestrians and cyclist. We will create a favorable atmosphere for the right type of business and industry those that are clean and provide a good living for our residents. The services expected from the Town are sidewalks, parks, green spaces, and well run utilities and emergency services. To develop this vision we intend to assertively use zoning, subdivision regulations, extraterritorial planning authority and annexation.

(1) Strategic Planning Goals #1 - To provide for the orderly development of the Town of Weaverville, improving upon those conditions which detract from quality urban development while protecting and promoting those characteristics which contribute to or enhance desirable growth.

#1 Objective - Provide quality services to our citizens: (1) clean, safe, efficient water system; (2) weekly trash pick up, recycling at curbside; (3) bi-weekly leaf and brush removal; and (4) well maintained street system.

#2 Objective - Fast and efficient emergency services: (1) maintaining a low crime rate; (2) nationally recognized Community Policing; (3) Senior Citizen call program; (4) First Responder program to assist Emergency Medical Services; (5) Fire prevention; and (6) Fire suppression.

#3 Objective - Well organized and competent staff: (1) low tax rate; (2) very high tax collection rates; and (3) nationally recognized financial programming.

#4 Objective - Zoning and subdivision protection: (1) reviewing and approval for new subdivisions; and (2) enforcement of zoning ordinance.

(2) Strategic Planning Goal #2 - To promote the stability of existing residential neighborhoods while providing for a diversity of housing alternatives to meet the needs of all age and income groups.

#1 Objective - Guidance and supervision to area developers in the development of single-family residential homes, multi-family homes, townhouses and condos.

#2 Objective - Provide recreation needs of our citizens: (1) funding Lake Louise, the Town provides a safe place for our citizens to walk, exercise, fish, picnic and for small children to play; (2) Senior Citizen Luncheon; (3) development of our wildlife habit nature park; and (4) Fourth of July celebration, Christmas Parade.

#3 Objective - Walkable community: (1) construction of new sidewalks and sidewalk maintenance.

#4 Objective - Safe Community: (1) Weaverville Police and Fire Departments provide assistance to our residents as necessary without additional cost to the citizens.

(3) Strategic Planning Goal #3 - Promote an economy with an appropriate balance of industry, business and services, developed in harmony with the environment and the Town's residential character.

#1 Objective - Use of Planning and Zoning Guidelines: (1) provide assistance to developers with plan review in order to ensure that the guidelines of the Town are met; and (2) work with the Planning & Zoning Board and the Board of Adjustment.

(4) Strategic Planning Goal #4 – Improve the provisions of public facilities and services that will benefit the residents of Weaverville.

#1 Objective - Provide public facilities: (1) maintain the following: (a) water treatment facility and distribution lines; (b) municipal facility; (c) public works facility; (d) fire department; and (e) storm drainage projects.

(5) Strategic Planning Goal #5 - To promote the distinct community identity of the Town of Weaverville within the county, the region and the state.

#1 Objective - Community Leadership: (1) to be recognized as a leader in financial development within the region and State by receiving the GFOA Budget Award and CAFER; (2) serve on statewide committees for the North Carolina League of Municipalities; and (3) serving on local community board of directors and planning agencies.

Mayor Bellamy praised Weaverville for the positive way they are dealing with growth in their community. In response, Mayor Stroud said that the Town has standards in place that promote good growth, e.g., sidewalks, lighting ordinances, etc.

Councilman Knoefel noted that the Town is in the process of a total re-evaluation of all their ordinances in order to bring them up-to-date.

In response to Councilman Mumpower, Councilman Knoefel said that they have not encountered any growth conflict with the Town of Woodfin. Vice-Mayor Davis noted that people probably would prefer that they be annexed by the Town of Weaverville because of the services Weaverville offers.

In response to Mayor Bellamy, Councilman Hallingse said that regarding annexation, Weaverville has their own water system and when a developer comes in and requests water, they have a choice of being annexed or paying double water rates. City Manager Morgan said that the choice offered really depends on where the property is located - if it's close to the Town and in their area they are looking for annexation, they suggest annexation.

Mayor Bellamy asked Weaverville to consider supporting Asheville in trying to get that annexation tool for growth and development, noting that the process is transparent and you can chart cost savings for individuals coming into the Town. Councilman Mumpower also noted that Weaverville provides an excellent model of how that works.

In response to Councilman Currie, City Attorney Oast said that he would provide the Town of Weaverville with a copy of Asheville's federal legislative requests, noting that one request is the introduction of legislation that will permit the City of Asheville to require that property with respect to which water service is requested be incorporated into the City, consistent with the laws of voluntary annexation in the State of North Carolina, or other reasonable limitation.

When Councilwoman Jones asked if Weaverville has discussed regional growth with Buncombe County or have had conversations on green initiatives on the Buncombe County Parks & Greenways Plan, Mayor Stroud said that they have had no conversations about that plan, but felt it was important and would be open for discussion.

Mayor Bellamy felt it would be nice to see some greenway connectivity between Asheville and Weaverville along the river.

Vice-Mayor Davis felt there were some good opportunities for a marked bicycle route through Woodfin to Weaverville along the river as well.

In response to Councilman Mumpower on ways that Asheville can partner with Weaverville, City Manager Morgan said that we do have mutual aid agreements with the Police and Fire Departments. He said they are not now partnering with Asheville on drug interdiction, noting that Weaverville is not having the same types of issues that Asheville has in that matter. He then explained the many programs they have instituted to keep their crime rate extremely low in Weaverville.

In response to Mayor Bellamy, Mayor Stroud said that she was not aware of the I-SAFE Program that educates parents on internet predators but would like Asheville to provide that information to her.

Mayor Bellamy noted that last week our House Study Committee on Annexation recommended to the Full House a moratorium on all annexations, except voluntary contiguous annexations, until June of 2009. She said that City Council hadn't had an opportunity to discuss

that yet. Mayor Stroud expressed concern, noting that their Council hasn't had a chance to discuss that yet either.

In response to Councilman Hallingse, Mayor Bellamy briefly explained the I-26 Connector process to date, noting that a report should be coming back to City Council near August 1, 2008 for an update. She explained the need for our communities to come together or the funds for the connector will go to other municipalities. She said that when the report is scheduled for City Council, we will notify and invite neighboring communities to hear first hand the report from the N.C. Dept. of Transportation.

In response to Councilman Newman, City Manager Morgan explained Weaverville's health plan initiative, along with their wellness program.

Councilman Hallingse explained how the Town of Weaverville is partnering with Asheville on large Fire Department purchases.

Mayor Bellamy summarized the following outcomes from this very beneficial meeting as follows: (1) Asheville staff will provide the Town of Weaverville with a copy of their federal legislation agenda; (2) Asheville staff will invite area municipalities to the I-26 Connector NCDOT Update when it comes before the Asheville City Council; (3) regarding the annexation legislation, Asheville staff will notify the Town of Weaverville when that issue comes forward and Asheville Council will possibly ask Weaverville to be co-authors on a position; (4) Asheville City Council asked Weaverville to consider being supportive of Asheville's legislative request regarding an additional tool for growth and development; (5) Share information on the recently approved Bicycle Plan for a possible bicycle route along the river through Woodfin to Weaverville; (6) Asheville staff to provide information to Weaverville on the I-SAFE Program; (7) Asheville staff to follow-up on the possibility of a greenway along the river connecting Asheville to Weaverville; (8) Explore the potential of combining fire apparatus purchases; (9) Share information on debt financing alternative and interest rates comparisons; (10) Share information on the Asheville Project (health care); and (11) Asheville City Council encouraged Weaverville to bring something to Asheville's attention when there is something affecting them that the City might miss.

On behalf of City Council, Mayor Bellamy again thanked Mayor Stroud and the Weaverville Council for their willingness to meet and noted that her goal is for our municipalities to work together and support each other to benefit our employees and also our communities as a whole.

Mayor Bellamy hoped to continue having conversations with Weaverville on ways they can help and support one another.

On behalf of the Weaverville Council, Mayor Stroud thanked the City of Asheville for hosting this joint meeting.

At 6:13 p.m., Mayor Bellamy and Mayor Stroud adjourned their respective meetings.

Magdalen Burleson
CITY CLERK

Terry M Bellamy
MAYOR

Tuesday – May 13, 2008 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; Councilman William A. Russell Jr.; City Manager Gary W. Jackson; Assistant City Attorney Martha McGlohon; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

The Teens Against Tobacco Use Club from Asheville High School led City Council in the Pledge of Allegiance. The students introduced themselves and briefly spoke about the goals of their Club. Mayor Bellamy noted that City Council has asked our state legislators to prohibit smoking in parks.

INVOCATION

Councilman Newman gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING MAY 11-18, 2008, AS "AMERICORPS WEEK"

Vice-Mayor Davis read the proclamation proclaiming May 11-18, 2008, as "Americorps Week" in the City of Asheville. He presented the proclamation to Ms. Terry Capps, Director of Project POWER/AmeriCorps, and Program Officer Alicia Hartsfield from the Governor's Office, who briefed City Council on some activities taking place during the week.

B. RECOGNITION OF THE CITY OF ASHEVILLE YOUTH LEADERSHIP ACADEMY GRADUATES

Mayor Bellamy said that the City of Asheville Youth Leadership Academy (CAYLA) is committed to providing its students with (a) a meaningful summer work experience; (b) leadership development through seminars and community service; and (c) college preparatory activities, including yearlong academic support.

CAYLA is an integral part of the City's 'Grow Our Own' initiative, as envisioned by City of Asheville Mayor Terry Bellamy and the Asheville City Council. The City is committed to giving Asheville's young people the opportunity to stay and work in Asheville, as well as to have valuable work experiences that will advance their future careers wherever they go.

CAYLA recruits, trains and places local high school students at meaningful summer jobs with the City and with participating agencies, in addition to providing weekly day-long workshops on topics such as financial literacy, leadership, community service and college preparation. CAYLA engages students throughout the school year by offering career-focused enrichment activities and individualized academic support. In hopes of broadening students' horizons and aspirations, local professionals are invited to the high school to speak to the students about their careers (and specifically, how college and academics contributed to their achievements). In addition, regular service projects foster a sense of unity among the students and connect them to the larger community. The CAYLA students have become positive role models for their peers and, just as importantly, for the many children with whom they interact, including their younger siblings and neighbors. The CAYLA students have completed more than 425 hours of community

service with agencies including MANNA FoodBank, RiverLink, Meals on Wheels, the Irene Wortham Center, ABCCM Women and Children's Shelter, and the Lee-Walker Heights Youthful HAND Daycare, among others.

The 20 students of the inaugural class were selected by a committee of local education and nonprofit leaders last spring. Having successfully completed the year-long program this May, each student will be awarded $2,000 for a 529 College Savings Fund set up in their name.

She recognized the Class of 2007-08 Graduates: Keshawnna Benjamin, Darius Drummond, Dwayne "DJay" Horton, Warren "Dub" Jamison, Tyrell Mauldin, Charmonica Sams, Anice Smith, Jill Smith, Sarah Smith, James Smith III, and Jeanisha Williams. She then recognized the graduating seniors: Zeke Buchanan, Chanel Fretwell, Tequeria "Tee" Harris, Tewonya Harris, Shalissa McDaniels, Isabel Perez, Charriat Robinson, John "Matt" Shaw, and Bryn Williams.

II. CONSENT AGENDA:

At the request of Councilman Mumpower, Consent Agenda Items "I," "J" and "K" were removed from the Consent Agenda for discussion and/or individual votes.

At the request of Mayor Bellamy, Consent Agenda Item "L" was removed from the Consent Agenda for discussion and/or individuals votes.

A. APPROVAL OF THE MINUTES OF THE FORMAL MEETING HELD ON APRIL 22, 2008, AND THE JOINT MEETING WITH THE TOWN OF WEAVERVILLE HELD ON APRIL 29, 2008

B. RESOLUTION NO. 08-91 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A TWO YEAR CONTRACT FOR HAZARDOUS MATERIALS EMERGENCY RESPONSE WITH THE N.C. DEPT. OF CRIME CONTROL AND PUBLIC SAFETY

Summary: The consideration of a resolution authorizing the City Manager to enter into a two (2) year contract for hazardous materials emergency response with the North Carolina Department of Crime Control and Public Safety.

This request is for Asheville Fire and Rescue to continue to provide hazardous materials emergency response for Western North Carolina, as we have done in the past fourteen (14) years. The State of North Carolina is divided into seven geographical regions for the purpose of hazardous materials emergency response. The North Carolina Department of Crime Control and Public Safety, Division of Emergency Management contracts with municipalities across North Carolina to respond into the seven geographical regions and provide technician level hazardous materials emergency response. Asheville Fire and Rescue's (RRT 6) area encompasses the twenty westernmost counties of North Carolina. The City of Asheville has been a regional hazardous materials provider since FY 1994-1995. The State of North Carolina provides funding that fully supports the ongoing operational costs of the program.

This action complies with the Strategic Operating Plan by allowing Asheville's Hazardous Materials Team the full use of highly specialized and technical equipment, this contract will significantly assist towards the goal of making Asheville a safest city, based on appropriate metrics for similarly sized cities.

Pros:

- The State of North Carolina provides the hazardous materials response truck, all response equipment and provides for administrative costs of operating the team. In addition, the state funds extensive training for members of the Asheville Fire and Rescue Department to enable us to competently handle hazardous materials emergencies.

- The City of Asheville has full use of the truck and all specialty equipment within the City of Asheville. Without the state hazardous materials contract, Asheville taxpayers would need to provide much of the resources necessary to properly respond to emergencies within Asheville. With the contract, we have the advantage of the equipment and resources being funded at the state level, rather than at the local level.
- During the fourteen (14) years that we have provided regional hazardous materials response services, we have not experienced difficulties or disadvantages with the program.

Con:

- None have been identified or known at this time.

There is no fiscal impact associated with this contract. The North Carolina Department of Crime Control and Public Safety, Division of Emergency Management will reimburse the City of Asheville for expenses incurred for each of the two (2) years of the contract period.

City staff recommends City Council authorize the City Manager to enter into an interlocal agreement with the North Carolina Department of Crime Control and Public Safety, Division of Emergency Management to provide regional hazardous materials emergency response for region 6.

RESOLUTION BOOK NO. 31 – PAGE 155

C. RESOLUTION NO. 08-92- RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A NON-MATCHING GRANT FROM THE N.C. DEPT. OF CRIME CONTROL AND PUBLIC SAFETY FOR THE PROCUREMENT OF EQUIPMENT TO BE USED BY HAZARDOUS MATERIALS REGIONAL RESPONSE TEAM 6 – ASHEVILLE

Summary: The consideration of a resolution authorizing the City Manager to accept a non-matching grant in the amount of $251,571.00 from the North Carolina Department of Crime Control and Public Safety, Division of Emergency Management for the procurement of equipment to be used by Hazardous Materials Regional Response Team 6 – Asheville, and the associated budget amendment.

The U.S. Department of Homeland Security and the Office of Domestic Preparedness has made funds available through the State Homeland Security Grant Number: FY2007-GE-T7-0048 to implement the State Homeland Security Strategy. The strategy identifies the NC Hazardous Materials Regional Response Teams (RRT) as an integral component of North Carolina's preparation and response to manmade and natural emergencies and disasters. The purpose of the grant is to purchase specialized equipment to be used on-scene and to prepare for threatened or actual weapons of mass destruction or domestic terrorists attacks or major disasters

There are seven Regional Response Teams (RRT) strategicaliy located throughout the state. Asheville Fire and Rescue hosts one of the seven state funded teams - RRT 6. The team responds to hazardous materials incidents in the twenty westernmost counties of North Carolina.

Each of the seven RRTs will receive an equal amount of non-matching funding and each will procure comparable equipment. The equipment consists of updated detection and monitoring instruments, personal protective equipment, self contained breathing apparatus and mitigation materials required to lessen the affects of terrorist's attacks and hazardous materials incidents.

The grant is non-matching and all equipment provided through this grant will become the property of the Asheville City Government.

This action complies with the Strategic Operating Plan by better equipping the Hazardous Materials Team with upgraded equipment, this grant will assist in making Asheville a safer city, based on appropriate metrics for similarly sized cities.

Pros:

- The Department of Crime Control and Public Safety, Division of Emergency Management, will provide $251,571.00 in non-matching funds for the purpose of upgrading Asheville and Western North Carolina's terrorism response capabilities.
- The equipment is state of the art and will better address the risk of terrorist's attacks and hazardous materials incidents.
- All statewide regional response teams will be comparably equipped and interoperability will be realized should an event require the resources of additional teams.
- This equipment is immediately available to Asheville residents and businesses. This level of equipment would most likely not be able to be obtained through the city's general budget process.
- Firefighter and citizen safety will be enhanced.

Con:

- The City of Asheville will be responsible for maintenance and upkeep of the equipment.

There is no fiscal impact associated with this grant, as it is non-matching.

City staff recommends that City Council accept the non-matching grant from the Department of Crime Control and Public Safety, Division of Emergency Management to enhance AFR's capabilities to protect Asheville and Western North Carolina, and the associated budget amendment.

RESOLUTION BOOK NO. 31 – PAGE 156

D. ORDINANCE NO. 3615 - BUDGET AMENDMENT TO ACCEPT A NON-MATCHING GRANT FROM THE N.C. DEPT. OF CRIME CONTROL AND PUBLIC SAFETY FOR THE PROCUREMENT OF EQUIPMENT TO BE USED BY HAZARDOUS MATERIALS REGIONAL RESPONSE TEAM 6 – ASHEVILLE

Summary: See Consent Agenda "C" above.

ORDINANCE BOOK NO. 24 – PAGE 447

E. ORDINANCE NO. 3616 - BUDGET AMENDMENT AUTHORIZING REIMBURSEMENT OF FUNDS COLLECTED IN FISCAL YEAR 2007-08 DUE TO OUR CURRENT CONTRACT FOR HAZARDOUS MATERIALS EMERGENCY RESPONSE WITH THE N.C. DEPT. OF CRIME CONTROL AND PUBLIC SAFETY

Summary: The consideration of a budget amendment, in the amount of $79,980.74, authorizing reimbursement of funds collected in Fiscal Year 2007-08 due to our current contract for hazardous materials emergency response with the North Carolina Department of Crime Control and Public Safety.

Throughout Fiscal Year 2007-08, Asheville Fire and Rescue has received funds for reimbursement of expenses, primarily from the State of North Carolina for hazardous materials emergency response services. This request is to replenish the department's most appropriate line items in the amount of $79,980.74 through a budget amendment.

This action complies with the Strategic Operating Plan by the hazardous materials services enable Asheville to work towards becoming a safest city. Also, the reimbursement

allows costs for services to not solely be bore by city taxpayers, making Asheville more affordable.

Pro:

- Costs that are incurred in serving as a hazardous materials team are reimbursed to city government, lessening the financial burden on city taxpayers.

Con:

- None have been identified or known at this time.

The fiscal impact is the acceptance of this budget amendment will relieve the Asheville general fund of $79,980.74 of expense.

City staff recommends City Council approve the above referenced budget amendment in the amount of $79,980.74.

ORDINANCE BOOK NO. 24 – PAGE 449

F. ORDINANCE NO. 3617 - BUDGET AMENDMENT FOR THE CIVIC CENTER WHICH WILL BE SUPPORTED WITH AN EQUAL AMOUNT OF ADDITIONAL REVENUE

Summary: The consideration of a budget amendment, in the amount of $125,000, to increase the Civic Center Fund to reflect updated Fiscal Year 2007-08 revenue and expenditure projections.

Due to many successful events, higher than expected concessions revenues and a chiller lease that was extended by eight months, Civic Center Fund revenues and expenditures are expected to exceed budget by the end of Fiscal Year 2007-08. As a result, staff has calculated an updated estimate of the expected revenues and expenses in the Civic Center Fund. In order to fund anticipated expenses over the last quarter of the current fiscal year, staff is recommending that the Civic Center Fund expenditure budget be increased by $125,000. The additional revenue generated by concessions will cover the cost of the budget amendment; therefore, no additional transfer from the General Fund is required. Staff is estimating that the year-end operating deficit for the Civic Center will be slightly less than the budgeted deficit. This amendment has been presented to the Civic Center Commission and was positively received by all in attendance.

Pros:

- Provides sufficient budget authorization for anticipated expenditures in the Civic Center Fund without increasing the General Fund subsidy
- Allows for continued maintenance of Civic Center chiller

Con:

- None

This action supports the City Council Strategic Plan by supporting the Civic Center as a regional entertainment destination and improving the Civic Center customer experience.

Regarding the fiscal impact, year-end operating deficit for the Civic Center is projected to be less than budgeted.

Civic Center staff and Commission recommend City Council approve a budget amendment to increase the Civic Center Fund budget by $125,000 to reflect updated Fiscal Year 2007-08 revenue and expenditure projections.

Vice-Mayor Davis said that this will allow the maintenance of the Civic Center chiller.

ORDINANCE BOOK NO. 24 – PAGE 451

G. RESOLUTION NO. 08-93 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A UTILITY AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR WATER LINE IMPROVEMENTS ON NC 191 (BREVARD ROAD)

Summary: The consideration of a resolution authoring the Mayor to execute a Utility Agreement with the N.C. Dept. of Transportation (NCDOT) for water line improvements on NC 191 (Brevard Road).

The NCDOT is widening NC 191 Brevard Road from I-40 to I-26. This road project includes replacing the current 6 inch cast iron water line along Brevard Road with a new 24 inch ductile iron line. This project will also include boring and installing a 24 inch line under both interstates to connect the new line on both sides of the interstates. This cost is not including in this project and will be billed separately.

The current water line on this section of Brevard Road is a problematic 6 inch cast iron line that does not provide adequate fire flow and protection to area businesses and residential customers. This project will enhance customer service by eliminating costly line breaks which cause water outages to area customers on the current line and provide increased fire protection on this section of Brevard Road. NCDOT estimated cost is $3,441,162.00. This is only an estimate from NCDOT and the actual cost could be lower or higher when the project is bid. The interstate boring project is estimated at $1,400,000.00. Funds for this project will be allocated through FY 2008/2009 water capital funding.

Regarding the Strategic Operating Plan, this action complies with infrastructure improvements.

Pro:

- This project will eliminate a problematic 6 inch water line and will enhance customer service, water service reliability and fire flow to commercial and residential customers.

Con:

- Funding for this project will be allocated through the water capital projects in Fiscal Year 2008/09 capital funding.

Funds will be allocated in Fiscal Year 2008/2009 for entire project which is estimated at $4.81 million

Staff recommends approval for the Mayor to execute the Utility Agreement with NCDOT for the Project: U-3601, WBS Element: 34958.2.2

RESOLUTION BOOK NO. 31 – PAGE 157

H. RESOLUTION NO. 08-94 - RESOLUTION AUTHORIZING THE MAYOR TO SIGN A TRAFFIC AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR INSTALLING EMERGENCY VEHICLE INITIATED PRE-EMPTION EQUIPMENT AT THE SIGNALIZED INTERSECTIONS OF CHARLOTTE STREET/COLLEGE STREET/SOUTH CHARLOTTE STREET AND COLLEGE STREET

Summary: The consideration of a resolution authorizing the Mayor to sign a traffic agreement with the N.C. Dept. of Transportation (NCDOT) for installing emergency vehicle initiated pre-emption equipment at the signalized intersection of US 70/74-A/SR 3284 (Charlotte Street/College Street/South Charlotte Street) and US 70/74-A (College Street).

Asheville Fire and Rescue would like to begin installing emergency vehicle initiated pre-emption equipment at various signalized intersections including state-maintained intersections throughout the City in an effort to expedite responses to emergency situations. This first project represents a pilot project for the City and when the equipment is installed, it should help make up for the time currently lost when fire trucks travel through the round-about under emergency situations. At this time, we anticipate undertaking an annual program to add the subject equipment at a rate of one to two signalized intersections per year. If we are successful in securing a grant, we might be able to speed the process up from time to time. This equipment will be a tremendous asset to Asheville Fire and Rescue in helping them maintain their current high accreditation rating.

The City of Asheville is responsible for all costs associated with the subject equipment including design, material cost, installation *(labor and equipment)*, NCDOT's plan review and inspection costs, and annual maintenance. The total estimated cost for the project is $30,000 and a Capital Improvement Program project in the amount of $30,000 was set up during Fiscal Year 2007-08. It is anticipated that the annual maintenance cost would be about $100, which will come from the Transportation Operations operating budget *(1603)*.

Pro:

- Expedite responses to emergency situations.

Cons:

- There is an installation cost of $30,000 and an annual maintenance cost of about $100.
- Asheville Fire and Rescue is the only department authorized to activate the subject equipment.

The estimated total cost to the City for this project is $30,000. A Capital Improvement Program project was set up for the subject project in the amount of $30,000 during Fiscal Year 2007-08. In addition, the anticipated annual maintenance cost is about $100.

Staff recommends that City Council approve a resolution authorizing the Mayor to sign a traffic agreement with NCDOT for installing emergency vehicle initiated pre-emption equipment at the signalized intersection of US 70/74-A/SR 3284 (Charlotte Street/College Street/South Charlotte Street) and US 70/74-A (College Street).

In response to Mayor Bellamy, Fire Chief Grayson spoke about the tremendous asset this equipment will be to the Asheville Fire and Rescue Department.

RESOLUTION BOOK NO. 31 – PAGE 158

I. BUDGET AMENDMENT FROM THE N.C. DEPT. OF TRANSPORTATION IN THE BICYCLE TRANSPORTATION IMPROVEMENT PROGRAM REGARDING THE REED CREEK GREENWAY PHASE II TRAIL CONSTRUCTION COSTS

This item was removed from the Consent Agenda for discussion and/or an individual vote.

J. RESOLUTION SUPPORTING THE METROPOLITAN SEWERAGE DISTRICT'S PROGRAMS TO ENCOURAGE DEVELOPMENT OF AFFORDABLE HOUSING

This item was removed from the Consent Agenda for discussion and/or an individual vote.

K. RESOLUTION SUPPORTING BUNCOMBE COUNTY'S REQUEST TO THE STATE BOARD OF TRANSPORTATION TO DEDICATE THE STATE

MAINTAINED BRIDGE OR INTERCHANGE CROSSING US 25 AT EXIT 50 ON I-40 THE "WINSTON PULLIAM BRIDGE OR INTERCHANGE"

This item was removed from the Consent Agenda for discussion and/or an individual vote.

L. **RESOLUTION AUTHORIZING THE CITY MANAGER TO MAKE PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE MOUNTAIN SPORTS FESTIVAL FROM MAY 30 – JUNE 1, 2008**

RESOLUTION AUTHORIZING THE CITY MANAGER TO MAKE PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE DOWNTOWN AFTER 5 EVENTS

RESOLUTION AUTHORIZING THE CITY MANAGER TO MAKE PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE CITY OF ASHEVILLE OPEN TENNIS CHAMPIONSHIPS ON JULY 17 AND 18, 2008

This item was removed from the Consent Agenda for discussion and/or an individual vote.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilwoman Cape moved for the adoption of the Consent Agenda. This motion was seconded by Vice-Mayor Davis and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

I. **ORDINANCE NO. 3618 - BUDGET AMENDMENT FROM THE N.C. DEPT. OF TRANSPORTATION IN THE BICYCLE TRANSPORTATION IMPROVEMENT PROGRAM REGARDING THE REED CREEK GREENWAY PHASE II TRAIL CONSTRUCTION COSTS**

Summary: The consideration to authorize the City Manager to amend the budget of Phase II of Reed Creek Greenway, reflecting the receipt of a fully executed grant agreement from the N.C. Dept. of Transportation (NCDOT) for reimbursement of trail construction costs up to $400,000.

The NCDOT in the Division of Bicycle and Pedestrian Transportation has awarded the City of Asheville an allocation up to $400,000 for construction of the Reed Creek Greenway as part of the NCDOT Transportation Improvement Plan. The funds will be combined with the $36,500 budgeted in the City's Fiscal Year 2007/08 capital improvement budget for Reed Creek Greenway Phase II, and used to construct the greenway along Broadway between Cauble and Magnolia Streets. This section of the greenway will be approximately 1,600 linear feet, 10-foot wide and paved with asphalt.

Phase I of the greenway between Catawba and Cauble Streets is complete, and Phase II is expected to begin in 2008 once the final easement and land acquisitions for this phase are complete. Once complete, Reed Creek Greenway will connect the Glenn's Creek Greenway adjacent to the UNC Asheville campus to downtown Asheville.

The City of Asheville has received the fully executed agreement from the NCDOT and the funds will be reimbursed when the construction is complete.

This action complies with the Strategic Operating Plan in that the Reed Creek Greenway construction ties in with the Strategic Operating Plan by addressing the Growth, Development & Land Use Priority area; supporting multi-modal programs.

Pros:
- Leverages the City's existing capital funds allocated for construction of Reed Creek
- Keeps the project timeline of Reed Creek Greenway on track to complete construction in a timely manner

Con:
- None

The budget amendment will increase the Capital Improvement Budget by $400,000.

City staff recommends City Council approve a budget amendment in the amount of $400,000 to increase the budget for Reed Creek Greenway Phase II as a result of a grant from the NCDOT.

Councilman Mumpower could not support this action because until the State fixes our court system, he felt to invest money in bicycle transportation is a misinvestment of funds.

Councilman Newman moved for the adoption of Ordinance No. 3618. This motion was seconded by Councilwoman Jones and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 24 – PAGE 453

J. RESOLUTION NO. 08-95 - RESOLUTION SUPPORTING THE METROPOLITAN SEWERAGE DISTRICT'S PROGRAMS TO ENCOURAGE DEVELOPMENT OF AFFORDABLE HOUSING

Summary: The consideration of a resolution supporting the Metropolitan Sewerage District's programs to encourage affordable housing development.

The Metropolitan Sewerage District (MSD) currently has two programs in place that encourage the development of affordable housing: (1) A rebate of up to $1,100 per unit in the facility fee for new affordable housing developments; and (2) A cost recovery program through which MSD contributes a portion of the cost of extending the public sewer to the property on which the housing is located.

At present the cost recovery program applies to all developments with an offsite sewer extension, but the MSD Board is considering changing this policy to one benefiting only affordable housing. To comply with state law, it is necessary for MSD to demonstrate a compelling governmental interest in allowing cost recovery for affordable housing. The attached draft resolution evidences the City of Asheville's interest. The other member agencies are being asked for similar resolutions. In the absence of such support, it appears likely that MSD will terminate its cost recovery program altogether.

The MSD programs have provided valuable assistance to affordable housing in and near Asheville. For example the MSD fee rebate for the Griffin Apartments was $15,000. Cost recovery for Crowell Park Apartments will be $40,000 if the program is continued. The tight margins within which affordable housing developers work make these amounts very significant.

Pros:
- Helps MSD continue valuable incentives for the development of affordable housing
- Supports City strategic plan objectives in areas of affordability and sustainability.

Con:

- None

City staff recommends City Council adopt a resolution supporting the MSD's programs to encourage affordable housing development.

Councilman Mumpower had nothing against affordable housing, but he against creating a special interest system within MSD and Asheville's support of it. He felt there are opportunities for abuse in this effort and there better ways for us to support affordable housing.

Mayor Bellamy, member of the MSD Board, said that this is a re-affirmation of an existing MSD policy. She noted that MSD is very transparent in tracking their dollars.

Councilwoman Jones moved for the adoption of Resolution No. 08-95. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 31 – PAGE 159

K. RESOLUTION NO. 08-96 - RESOLUTION SUPPORTING BUNCOMBE COUNTY'S REQUEST TO THE STATE BOARD OF TRANSPORTATION TO DEDICATE THE STATE MAINTAINED BRIDGE OR INTERCHANGE CROSSING US 25 AT EXIT 50 ON I-40 THE "WINSTON PULLIAM BRIDGE OR INTERCHANGE"

Mayor Bellamy read the resolution as follows: "Winston Pulliam is a community leader, philanthropist and someone who deserves to be recognized as a 'Man To Match Our Mountains.' Winston Pulliam has served on numerous boards and agencies throughout his career and has always been a visionary leader. As part of his vision to help veterans, Winston Pulliam and Pulliam Properties has helped develop the largest homeless veteran's housing and veteran employment training service center in the State here in Buncombe County. Asheville Buncombe Community Christian Ministries and its 2500 active volunteers have requested that Exit 50 Interchange or Bridge on I-40 be named in Mr. Pulliam's honor. The Asheville City Council finds it would be fitting and proper to honor Mr. Winston Pulliam. City Council hereby supports Buncombe County's request that the Board of Transportation for the State of North Carolina designate the Interchange or bridge located at Exit 50 on I-40 over US 25 as the Winston Pulliam Bridge or Interchange. That upon said designation that the State Dept. of Transportation calls to have erected appropriate signage to make the general public aware of said dedication."

Councilman Mumpower felt that Mr. Pulliam has contributed a lot to the community, however, there are other people who lend a strong hand in this community and he was not comfortable in supporting this action.

Councilwoman Jones moved for the adoption of Resolution No. 08-96. This motion was seconded by Vice-Mayor Davis and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 31 – PAGE 161

L. RESOLUTION NO. 08-97 – RESOLUTION AUTHORIZING THE CITY MANAGER TO MAKE PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE MOUNTAIN SPORTS FESTIVAL FROM MAY 30 – JUNE 1, 2008

RESOLUTION NO. 08-97 – RESOLUTION AUTHORIZING THE CITY MANAGER TO MAKE PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE DOWNTOWN AFTER 5 EVENTS

RESOLUTION NO. 08-97 – RESOLUTION AUTHORIZING THE CITY MANAGER TO MAKE PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE CITY OF ASHEVILLE OPEN TENNIS CHAMPIONSHIPS ON JULY 17 AND 18, 2008

Summary: The consideration of resolutions authorizing the City Manager to make provisions for the possession and consumption of malt beverages and/or unfortified wine at the following events: Mountain Sports Festival, Downtown After 5, City of Asheville Open Tennis Championships.

The organizations responsible for the Mountain Sports Festival, Downtown After 5 and the City of Asheville Open Tennis Championships have requested through the Asheville Parks, Recreation & Cultural Arts Department that City Council permit them to serve beer and/or unfortified wine at their events and allow for consumption at these events.

- The Mountain Sports Festival will be held on Friday, May 30, 2008, Saturday, May 31, 2008 and Sunday, June 1, 2008 from 4:00 PM – 6:30 PM within the boundaries of Carrier Park.

- Downtown After 5 will be held on the Fridays of May 16, June 20, July 18, August 15 and September 19, 2008 from 5:00 PM – 9:30 PM on the 100 block of Lexington Avenue.

- The City of Asheville Open Tennis Championships will be held on Thursday, July 17, 2008 and Friday, July 18, 2008 from 4:00 PM – 11:00 PM within the boundaries of the Aston Park Tennis Complex.

Pro:

- Allows fundraising opportunities

Con:

- Potential for public safety issues

This action aligns with the City Council Strategic Operating Plan in the Sense of Place, Heritage and the Arts: Enhance Asheville's vibrancy, character and cultural art.

The fiscal impact would be the overtime pay for Ashville Police Department officers.

City staff recommends City Council adopt the resolutions authorizing the City Manager to approve a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Mountain Sports Festival, Downtown After 5 and the City of Asheville Open Tennis Championships.

Councilman Newman moved for the adoption of Resolution Nos. 08-97, 08-98 and 08-99. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Mayor Bellamy voting "no."

RESOLUTION NO. 08-97 – RESOLUTION BOOK NO. 31 – PAGE 162
RESOLUTION NO. 08-98 – RESOLUTION BOOK NO. 31 – PAGE 165
RESOLUTION NO. 08-99 – RESOLUTION BOOK NO. 31 – PAGE 168

III. PRESENTATIONS & REPORTS:

A. DOWNTOWN MASTER PLAN UPDATE

At Mayor Bellamy's request, Mr. Pat Whalen, Chairman of the Downtown Commission, updated City Council on the kick-off meeting for the Downtown Master Plan that was held on May 8, 2008, that had an estimated community turnout of 350 people. Among the things people liked

about downtown was its funky, eclectic energy, downtown residences, downtown walkability and historic texture, downtown views of the mountains, its central location and accessibility, and the energy efficiency of living and working downtown. Among the things people said needed improvement were more affordable workforce housing, more parking, more parks, more cleanliness, protection for small local businesses, more art and opportunities for artists, and more green buildings. There was one additional challenge mentioned several times. That question was whether we have the local leadership to do an effective master plan and to follow through with specific implementation of the plan. On one hand this may be viewed as an unfair criticism of City Council, given the fact that this Council has shown the leadership and vision to initiate this process. But on the other hand, the concerns about leadership probably represent a fair statement of the community's sense of frustration about flaws in past public processes, with plans and reports gathering dust in the basement of City Hall. The question raised was whether City Council will stand behind the results of this process and take the action necessary to achieve its vision. The community needs Council's assurance that this time the public process will determine the outcome and this time no group will be allowed to sit out all the work, bypassing the process, and then come before Council at the 11th hour to demand the abandonment of all the substantial parts of the work generated by the public input, debate, compromise and commitment. He could think of no better way to support the process than for each Council member to be actively present walking from table to table hearing the citizens at work and assuring them of your support for fair and open processes. On behalf of the Downtown Commission, the Advisory Committee and the people participating in the process, he asked for Council's continued support and their commitment and for their personal participation in this process.

Vice-Mayor Davis felt that the next most important event coming up is May 30 and 31, and he hoped Council will set aside time to be there.

Councilman Mumpower felt this is a flawed process and we have been through it many times before - we get people to the table with some assurance that if they invest their energy into it, it will be turned into action, which is not the case. He can't promise in the final hour that he will support what is presented.

Mayor Bellamy noted that an item regarding the status of plans and reports adopted by City Council since 2005, will be on the May 20, 2008, worksession. To say our processes have been flaws is not fair.

Councilwoman Cape felt there was a good cross section of people at the kick-off meeting and there are several ways people can give their input. Just from the first meeting she learned a lot, and she is excited about the project moving forward. She encouraged people to give their input as this is something we are doing with one another.

Mayor Bellamy felt that it was important to be updated on this process as this is one of the largest master plan investments Council has made in a long time. Again, at the next worksession, Council will have the opportunity to talk about the status of the plans and reports already adopted. Council needs to make a commitment that the plans not sit on the shelf.

B. QUARTERLY MANAGEMENT REPORT

Financial Report

Budget Director Tony McDowell briefly explained the following financial statements reflecting the City's overall financial position for the fiscal year through March 2008.

Amendments. Since the 2nd quarter budget report was presented to City Council, the General Fund budget has been amended five times, resulting in an overall increase in the budget of $149,828. A summary of the budget amendments is included below.

12/31/2007 Budget*	$91,422,438

Amendment	Amount
Nature Center State Grant	112,879
Progress Energy Land Acquisition Expenses (Fund Balance)	15,000
State Homelessness Grant	10,000
Insurance Claims	450,000
Biltmore Park Street Light Removal	11,949
Total Amendments	599,828
3/31/2008 Budget	$92,022,266

The amendment for the Progress Energy land acquisition expenses was the only amendment that was funded with an appropriation from the City's General Fund Fund Balance.

Revenues. Through March 31, 2008, the City has collected $71,329,759 in General Fund revenue, which represents approximately 83% of the total General Fund revenue budget. At this point in the prior fiscal year, the City had collected approximately 85% of the revenue budget. Most of the property tax revenue, the General Fund's largest revenue source, was collected in January and February, and property tax revenue estimates appear to be on target. Sales tax collections continue to slow, and staff is now projecting that sales tax revenue will come in under budget by $300,000. Based on prior year trends and year-to-date figures, staff is estimating that Fiscal Year 2007-08 revenue will exceed budget by $424,000.

In summary, (1) Property taxes: (a) 95% of budget collected; and (b) estimate: exceed budget by $50,000; (2) Sales taxes (a) 7 months collected to date; (b) growth rate is 1.9%; and (c) estimate: under budget by $300,000; (3) Intergovernmental/Charges/Licenses and Permits (a) estimate: exceed budget by 2.3% or $550,000. Overall, revenues will exceed budget by a net of 0.05% or $424,000.

Expenditures. General Fund expenditures through March 31, 2008 total $67,776,351 or 74% of the budget, which is slightly ahead of where expenditures typically are at this point in the fiscal year. However, based on current trends, staff anticipates that Fiscal Year 2007-08 year-end expenditures will come in under budget by $515,000. The budget savings reflect attrition and other cost savings that typically occur throughout the year.

In summary: (1) departments are absorbing inflationary increases within their existing budgets - health care, materials and fuel; and (2) projected budget savings: 0.6% of budget or $515,000.

Fund Balance. The year-end fund balance estimate is adjusted to reflect the fact that approximately $1.0 million, which was held in reserve on June 30, 2007, due to the delayed Transit grant draw downs, will be released into the unreserved fund balance this fiscal year. Year-end fund balance is estimated to be $17.44 million or 19.1% of expenditures.

Mr. McDowell briefly reviewed the following enterprise funds: Water Fund, Civic Center Fund, Parking Fund, Transit Fund, Stormwater Fund, Golf Fund and Festivals Fund.

Throughout discussion, Mr. McDowell and Chief Financial Officer Ben Durant responded to various questions/comments from Council, some being, but are not limited to: what was our Fund Balance two years ago; are the budget amendments coming out of Fund Balance; summary of current year budgeted uses of Fund Balance; what land sale proceeds will be used for Overlook Park; what was the main cause for the revenue from the intergovernmental/ charges/licenses and permits;

In response to Mayor Bellamy, Mr. Durant said that we budgeted $6.3 Million in Fund Balance to draw down, but we will draw down only $5.4 Million from Fund Balance.

Mayor Bellamy noted that some of the things Council used Fund Balance for, at least in part included: (a) demolition on Tunnel Road of a health and safety hazard to adjacent property owners which we now have a lien on the property; (b) we are addressing the homeless issue; (c) we are working on viable economic development incentives to provide jobs that have a more than livable wage for our community; (d) we have invested money for hybrid buses for a clean environment; and (e) regarding annexation, we have to provide services to those areas. There are legitimate reasons why we drew money from Fund Balance. The bottom line is these things needed to be done.

In response to Councilman Mumpower, Mr. Durant explained that Fund Balance is there to be used essentially for three purposes: (1) emergencies; (2) for unanticipated needs; and (3) for one-time infrastructure or major projects. We have used our Fund Balance appropriately.

Councilman Mumpower said we used our Fund Balance to (1) support non-profit organizations; (2) co-sponsor a large number of events; (3) fund with significant dollars, a planning document; (4) maintain the Nature Center; and (5) fund untold other special interests over the course of this year. Regarding the I-26 Connector Project, we invested significant dollars and more importantly precious time on a project which he understands will be great, but will cost twice as much as the other options. He felt that every dollar spent stops us from spending it on basic core services.

Mayor Bellamy asked for staff to provide an analysis of how much has been spent in public safety over the past three years. She felt the community will be pleasantly surprised.

Strategic Operating Plan

Assistant City Manager Jeff Richardson said that the Asheville City Council identified short and long term goals at the January 2007 strategic planning retreat. He then provided the brief third quarterly update on the following key strategic initiatives associated with the eight priority areas reflected in the City's Strategic Plan.

A. Community Building
Measurement/Milestone:
- Housing Code Presentations since January 2007: 19 meetings, 592 attendees, 22 hours of training time
- Cable Channel programming
- Spring Citizens Academy: 28 citizens, 10 week session

B. Critical Services & Infrastructure
Measurement/Milestone:
- 2.97 miles of sidewalk installment in Fiscal Year 2007-08
- Weed & Seed Program results
- Upgrade and re-opening of Bee Tree Water Operations Facility
- Civic Center Garage restoration underway - Replacement of garage equipment in three garages (bids received)
- College and Charlotte Streets have been approved through the N.C. Dept. of Transportation and cleared for City Council approval.

C. Economic Development
Measurement/Milestone:
- City's exploration of development services re-design to include consideration of one-stop shop development review.

D. Growth, Development & Land Use
Measurement/Milestone:
- Public input meetings underway
- Completed the Downtown Parking Study

- **Staff analysis underway.** Final recommendation provided at end of 4th quarter

E. Housing Opportunities
Measurement/Milestone:
- $10k Technical Assistance Grant awarded to research the homeless service system, work to be completed in June
- SOAR demonstration project, a partnership with Buncombe County, Western Highlands and Mission Hospital to start in July
- Homeless Information Management System to be used by homeless service agencies receiving Community Development Block Grant funding to track critical data on homeless population

F. Natural & Built Environment
Measurement/Milestone:
- Six staff added in the stormwater and erosion control permit review process, allowing more timely review of project development. $72,000 fines in Fiscal Year 2007-08
- Completed two watershed engineering analyses

G. Sense of Place, Heritage & the Arts
Measurement/Milestone:
- Completed and presented to City Council the Bike Plan
- Greenway Master Plan to be completed by June

I. Intergovernmental Relations
Measurement/Milestone:
- Water service to Oaks subdivision
- City Council providing air time and exposure for MSD's public information efforts.

In addition, staff provided the following additional information:

A. Economic Development Key Indicator Report

The following charts: (1) employment change by major industry; (2) unemployment rates; (3) monthly home sales – units; (4) monthly home sales – average price; (5) residential building permits – units; (6) residential building permit – value; (7) number of new commercial permits; (8) number of new commercial permit values; (9) City business licenses; and (10) source of net population growth – special focus.

B. Police Department Drug & Community Policing Quarterly Report

The third quarter results addressing the Seven-Point Plan reveal positive results particularly in the area of community policing and outreach.

In response to Councilman Mumpower, Police Chief Hogan explained the efforts of the Asheville Police Department in meeting the mandate to eliminate the open air drug market. He also explained the feedback received from the Housing Authority.

Councilman Mumpower encouraged people to speak up if drug activity is going on in their neighborhood. He did not want to stop putting pressure on drug dealers until we shut down the open air drug market. The Police Department cannot do it without people getting involved and caring. He urged the community to contact our state legislators and urge them to fund the court system properly for timely and fair justice.

Mayor Bellamy said she has been talking to the residents and there is a positive change. She said the Police Department is making a difference. In the neighborhoods where the most success occurs are those with citizen volunteers who are meeting and talking with the Police officers and developing relationships. Police officers are willing to come to neighborhood meetings and provide information and organize walk-throughs. She urged people to contact the Police Department to organize a neighborhood watch program.

C. BUDGET PRESENTATION AND MOTION SETTING A PUBLIC HEARING ON JUNE 10, 2008

Regarding the 2008-09 budget overview, Chief Financial Officer Ben Durant reviewed the budget preview follow-up of Council information requests: (1) more detail on County landfill fee increase; (2) explain the rationale behind the Criminal Justice Information System (CJIS) payment and cost sharing and calculate the cost per City resident; (3) how much of the City's tax base is exempt and how does this compare to Raleigh and other local cities; and (4) prepare a list of items the City pays to itself, including water and stormwater fees.

Budget themes include slowing revenue growth, significant inflation in key areas, "belt-tightening," revenue adjustments, alternative capital financing, continuation of market based pay program and preservation of fund balance.

Using charts, Mr. Durant showed the slow revenue growth of the annual tax base and the recent sales tax trends. The Consumer Price Index (CPI) is 4.4%. From the Wall Street Journal on April 25, 2008, it read "Local government costs have been growing more quickly than in other parts of the economy because municipalities spend disproportionately on fast-rising items such as building materials, fuel, and health insurance. From the fourth quarter of 2006 to the fourth quarter of last year, prices for state and local expenditures rose 6.1% ... according to the Bureau of Economic Analysis."

Rising costs include: health insurance contribution - $1.5 Million; full-year funding for new positions - $800,000; increased transit subsidy $290,000 (includes continuation of $248,000 subsidy from Parking Fund); fuel costs rising faster than CPI - $328,000 (12.0%); landfill tip fees - $237,000; 911 dispatch contract - $119,000; CJIS contract increase - $165,000; and construction costs exceeding CPI - $63,000 (19.8%).

Belt-tightening includes (1) re-engineer to eliminate 10 positions - $480,000; (2) reduce training and travel - $250,000; (3) reduce professional services/small capital/materials - $596,000; and (4) eliminate Manager's contingency - $100,000. The bottom line is even with significant inflation, operating costs in the general fund show a 0.6% decrease.

In reviewing the outside agencies, the 2007-08 budget was $225,095 and the 2008-09 proposed budget is $151,000.

Revenue adjustments include (1) no property tax rate increase; and (2) revenue enhancements of (a) Council-approved fee adjustments - $281,833; and (b) increase cost recovery for fire inspections - $230,000.

Regarding capital improvements/debt, the capital financial strategies include (a) less pay-as-you-go-capital funding; (b) greater use of financing for vehicles; and (c) land sale revenue will fund major land purchases.

Major Capital Improvement funded projects include: fire aerial ladder - $1,100,000; street and sidewalk maintenance - $952,300; Overlook Park land purchase (to fund with land sale proceeds or fund balance) - $900,000; Civic Center improvements - $400,000; Reed Creek Greenway Phase II - $345,500; Public Safety radios - $335,000; Haw Creek land purchase (to fund with land sale proceeds or fund balance) - $250,000; and building security - $200,000.

Regarding the market-based pay program Phase III, (A) new to the plan: 101 position titles totaling 139 new employees; and (B) continuing adjustments from Phase I and II: 80 positions titles totaling 244 employees.

Mr. Durant then reviewed the General Fund revenue and expenditure summaries, along with graphs regarding the preservation of fund balance and the historical sales tax growth long-term outlook.

The upcoming schedule includes: May 20 worksession - Council priorities and enterprise funds; May 27 formal meeting - continuation of Council priorities (if needed); June 10 formal meeting - public hearing; June 17 worksession - continuation of Council priorities (if needed); and June 24 formal meeting - budget adoption.

When Mr. Durant questioned if Council requires further information on the proposed General Fund budget or if Council requires further discussion on its budget priorities at future worksessions, it was the consensus of Council that the proposed schedule is acceptable.

After responding to various questions/comments from Council, Mr. Durant said that he would provide detailed information on the major funded projects at the May 20 worksession, along with alternatives for the solid waste program. Some questions/comments Council raised included, but were not limited to: confirmation that the land sale proceeds of the current RFP process will not be used for Overlook Park;

Councilman Newman said that in light of the general budget environment, he felt Council could reach their goals through other kinds of public policy initiatives and other concerted efforts.

Mayor Bellamy thanked City Manager Jackson for his leadership. She noted that areas she used to receive complaint letters about have significantly improved and currently she receives appreciative letters for the Public Works Department staff. She stressed that our staff can do good work, but Council needs to give them the necessary tools. We may not be able to fund any new initiatives, but we can work on grants and partnerships.

Councilwoman Cape was pleased to see the several ideas put forth by the Public Works Department to manage waste and possibly reduce the cost of the City's tipping fees at the landfill. She offered, and it was the consensus of Council to accept that offer, to contact the Waste Reduction Partners at the Land-of-Sky to see if they would be interested in helping the City look at this issue in a comprehensive manner to evaluate if any changes could be made that would address the waste stream.

Councilman Mumpower moved to schedule the budget public hearing on June 10, 2008. This motion was seconded by Councilwoman Cape and carried unanimously.

At 7:01 p.m., Mayor Bellamy announced a short break.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO ESTABLISH STANDARDS FOR DIGITAL BILLBOARDS

ORDINANCE NO. 3619 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO ESTABLISH STANDARDS FOR DIGITAL BILLBOARDS

Mayor Bellamy opened the public hearing at 7:25 p.m.

Interim Planning & Development Director Shannon Tuch said that this is the consideration of amendments to the Unified Development Ordinance (UDO) to add new definitions and standards found in Articles II (definitions) and XIII (signs) restricting and regulating digital billboards. This public hearing was advertised on May 2 and 9, 2008.

In 2006/2007, representatives from Lamar Outdoor Advertising, Inc. approached the City of Asheville's staff and officials with interest in pursuing standards that would accommodate new digital advertising technology that could be utilized with their off-premise billboards. This new LED technology would allow a single sign structure to show separate static images (advertisements) that would change at regular intervals over a fixed period of time. Digital images would replace the former paper/vinyl images and would be controlled and managed electronically from remote locations. This method of advertising would allow for a more sustainable product but would also provide more efficient and lucrative advertising opportunities for Lamar. The efficiency of being able to place multiple advertisers on one sign would reduce the need and value of less visible signs scattered throughout the City; as a result, Lamar has proposed a reduction in total sign structures and the cumulative square footage of their sign faces. The following is their proposal:

- Remove 107 separate sign faces (multiple faces on a single structure; faces vary in size) and replace with 14 new digital faces;
- New digital sign faces will measure 10 feet x 30 feet (300 square feet total);
- Reduce the number of locations from 34 to 7-10 (no locations downtown);
- Most structures will support a double-faced sign; and
- Reduce overall sign square footage from 7,720 square feet to 4,200 square feet (a reduction of 46%)

Research into the topic of digital billboards has proven somewhat challenging and inconclusive. As a relatively new form of advertising, there is limited research exploring potential risks to motorists with little concrete documentation of those risks. Conversely, the benefits of such technology are well identified and do not appear to be disputed. Despite the public safety concerns, there is merit to allowing new effective technologies that allow for the easy updating of messages that reduces energy costs, eliminates the need for non-biodegradable materials, and dramatically reduces the number of miles traveled. There is the added benefit of an overall reduction of sign structures and faces that reduces the visual clutter along our roadways that competes with other scenic views

The primary concern over digital billboards is the potential increased risk to motorists as added distractions. By nature, billboards are designed to attract attention which has the undesirable consequence of distracting motorists. The National Highway Traffic Safety Administration released in 2006 information that concluded taking one's eyes off the road for more than two seconds, for any reason, significantly increased one's crash risk; however, increases in crash rates may be attributed to a great number of distractions, both internal and external. Assuming some level of agreement that a billboard is just one of many distractions contributing to an increasingly complex driving environment, then the question may be not whether a billboard momentarily distracts motorists but whether a digital billboard distracts motorists for a longer period than a traditional one. Proponents of digital billboards point out that no study has been able to establish a causal relationship between billboards, digital or traditional, and increased crash rates; however, the digital signs are relatively new technology and enough concern appears to have been raised prompting the Federal Highway Administration to announce that it will initiate a study to examine the safety issues related to electronic signs (results are not expected until 2009). Opposing opinions also present strong 'common sense' arguments that brightly lit signs that change messages every few seconds compel us to notice them and draw our attention away from the road. We also recognize a digital billboard from a greater distance and intuitively understand that the message will change and may keep our eyes glued in anticipation of the next advertisement. Lastly, creativity in advertising appears to know no bounds and has been known to employ certain methods that entice individuals to stay tuned to

see more or learn what happens next; attempts to regulate against this and other methods can be extremely challenging.

When considering whether electronic billboards are appropriate for Asheville, there are a number of factors that may be considered. The first is that the application of digital billboards may help further of a number of City goals including:

- Preserving and promoting opportunities for economic growth;
- Promoting sustainable (green) business practices; and
- Preserving scenic views.

Of course, in addition to these goals concern over protecting the public's health, safety, and welfare are also of great concern but in absence of any information that concretely identifies digital billboards as an increased safety risk to motorists, it becomes difficult to understand the extent of the risk or how to mitigate it. Nevertheless, should the Commission choose to adopt standards allowing digital billboards, regulations should be considered to minimize proliferation and their potential threats to public safety. A number of these standards are reflected in the ordinance and may be summarized as follows:

- Brightness controls to minimize glare and automatically adjust per the ambient light available;
- Limitations on the number of advertisers and the duration of the message;
- Conversion requirements that reduce the overall number of structures and sign faces;
- Prohibitions on known distractions such as flashing, scrolling, fades-in/out, emission of intermittent light, or animation of any kind; and
- Separation requirements to minimize the possibility of multiple distractions at one time.

Other Items of Note:

- In January 2005, an Ordinance that regulated the removal, repair, and relocation of Off-premise (billboard) signs was adopted along with a settlement agreement that resulted in the removal of some billboards.
- The number of advertisers affects the total face time of an advertisement, not the duration of the static image.
- Signs can be used to inform motorists of public safety announcements (highway crashes, long delays, Amber alerts, etc.).
- The largest (traditional) billboard size allowed in the City of Asheville is 380 square feet.
- Driver distraction is a factor in one out of every four crashes.
- Review of digital billboards could be considered on a case by case basis as a Conditional Use Permit.

The Planning & Zoning Commission has considered this information in two separate meetings where a delay in action was taken at the staff's request to allow time to conduct additional research and to work with the representatives of the outdoor advertising industry on developing standards that would meet their needs while accomplishing other City goals. The results of these meetings are reflected in the amendment draft and in the Commission's unanimous recommendation for approval. The draft as approved by the Planning & Zoning Commission includes the following highlights:

(1) The addition of two billboard corridors: (1) Long Shoals Road from Hendersonville Road to the extraterritorial jurisdiction area; and (2) Airport Road from Hendersonville Road to the boundary between Buncombe County and Henderson County.

(2) The maximum allowable size of 380 sq. ft. which is the maximum allowed now for a billboard).

(3) The conversion replacement formula is 3 to 1.

(4) There is an 8-second display time per advertisement (the Federal Highway Administration's minimum).

Pros:

- Provides for a more sustainable business practice.
- Provides new opportunity for advertisers and businesses relying on outdoor advertising.
- Would result in a reduction of sign structures and cumulative sign face.

Cons:

- Digital billboards will contribute to a complex driving environment and may increase distraction to motorists and increase the risk of crashes.

This draft has been circulated to CIBO, CAN, and CREIA along with other interested parties.

Staff recommends approval of the standards regulating digital billboards as presented in the ordinance, along with the addition of the two billboard corridors.

Mayor Bellamy closed the public hearing at 7:35 p.m.

Ms. Tuch responded to various questions/comments from Council, some being, but are not limited to: was this ordinance reviewed by the group reviewing the lighting ordinance; how many changing faces will be on each billboard; how do we control the brightness and how was that brightness level determined; what is the City's recourse if it's found that the brightness is exceeding what is allowed in the ordinance; is the brightness adjusted automatically; does the City have any sense on how many billboards will be taken down if this ordinance is adopted; update on the current digital billboard on I-26 by the Airport that was put up by an individual, but now Lamar has purchased the sign; explanation of energy savings for a 24-hour digital billboard vs. traditional flood lights at night for a regular billboard; how many billboards does the City currently have; and how did staff come up with the 3-1 conversion.

Regarding brightness, Mr. Terry Graves, representing Fairway Outdoor Advertising, said that the intent is for the digital billboard signs to look the same both during the day and night. The lighting is turned up during the daytime and then is dimmed down at night.

Councilwoman Cape said that she was supportive of the digital billboards, but not supportive of adding two additional billboard corridors. If we have a street that doesn't have billboards on them now, this is an opportunity to make the choice of saying we don't want more billboards in our community.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Cape moved to adopt Ordinance No. 3619, excluding the two additional billboard corridors. This motion was seconded by Councilwoman Jones.

Councilman Mumpower would have to speak against the motion because he felt that if we add the additional corridors, we further distribute the weight of the billboards and that is fair to the people who live in some of those areas that have a high concentration of billboards.

In response to Councilwoman Jones, Ms. Tuch said that if in the future digital billboards are found to create a public safety hazard, City Council could revise the standards.

The motion made by Councilwoman Cape and seconded by Councilwoman Jones failed on a 2-5 vote, with Councilwoman Cape and Councilwoman Jones voting "yes."

Councilman Russell moved to adopt Ordinance No. 3619 including the two additional billboard corridors. This motion was seconded by Councilman Mumpower and carried on a 6-1 vote, with Mayor Bellamy voting "no."

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B. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE CONDITIONAL ZONING ORDINANCE FOR PROPERTY LOCATED AT 1741 HENDERSONVILLE ROAD REGARDING SIGNAGE FOR THE WEIRBRIDGE VILLAGE PROJECT

At the request of City staff, Councilman Russell moved to continue this public hearing until May 27, 2008. This motion was seconded by Councilman Mumpower and carried unanimously.

V. UNFINISHED BUSINESS:

A. RESOLUTION REGARDING PROPOSED INCORPORATION OF THE TOWN OF SWANNANOA

Interim Planning & Development Director Shannon Tuch said that this is the consideration of a resolution addressing the incorporation of the Town of Swannanoa. The resolution reads in part: "(1) The City of Asheville approves the incorporation effort of the town of Swannanoa to obtain a greater degree of governance and control over its future through incorporation, but expresses the following concerns (a) that the size of the area proposed for incorporation will present practical difficulties in delivering urban services; (b) that the density and character of the area proposed for incorporation is predominately rural and does not reflect the intent of incorporation; and (c) incorporation affects the City of Asheville's opportunities for improved fiscal health; (2) The Task Force will request the Joint Legislative Commission on Municipal Incorporations to recommend to the General Assembly that any act incorporating Swannanoa be submitted to a referendum, pursuant to NCGS 120-172; and (3) The City Attorney is directed to transmit a certified copy of this resolution to the Commission."

In March of 2008, Council heard a presentation from residents of the Swannanoa area regarding their effort to incorporate. Following that presentation and some discussion by Council, there was direction to staff to more closely examine the western boundary of the proposed town of Swannanoa to ensure that the City of Asheville's interests would not be compromised if the area were to be incorporated. Subsequently, staff did more closely examine the western boundary and arranged for a meeting with representatives from the incorporation task force. Upon closer examination, the western portion of the area proposed for incorporation insufficiently qualified for annexation by the City of Asheville and is unlikely to qualify within the relatively near future; however, from a revenue standpoint it would be in the City's interest to keep the area unincorporated as it would allow for an opportunity to redraw the fire district boundaries and arrange for a service agreement between the Swannanoa Fire District and the Asheville Suburban Fire District, with the goal of sending the closest emergency responders to incidents. The mid point between Asheville's east fire station and Swannanoa's closest fire station is outside the current Asheville city limits and falls within the westernmost edge of the proposed town (in the area of Teems Lane and U.S. 70).

Opportunities exist to partner with Swannanoa Fire Department to provide fire and rescue services in a different manner than they are currently being provided. The current incorporation effort provides us the platform and opportunity to discuss and explore those opportunities that are both possible and viable. If fire district boundaries could be redrawn, it would result in some revenue for the City, lower fire district taxes for the residents and businesses and lower insurance

premiums for the business owners. However, the Swannanoa Fire Department would receive less revenue and redrawing of district boundaries must be approved by the Buncombe County Board of Commissioners. A rough estimate for potential revenue totals approximately $13,000 per year, not including a necessary contractual agreement with the Swannanoa Fire Department. It should be noted that this is not revenue currently received by the City and is simply identified as a lost opportunity once incorporation is in place.

Since the March meeting, Swannanoa representatives and staff have continued to discuss the matter; staff initially recommended a revised western boundary that more closely resembles the existing zip code boundary and would result in reduction of approximately ½ square mile. Staff felt that this line reasonably represented a service delivery area, was likely to have a surveyed boundary, and would protect Asheville's interests. Swannanoa representatives responded with a revised boundary to better reflect existing property lines but effectively retained the same number of square miles as originally proposed for incorporation at 23.6 square miles.

Staff also raised the question of whether the Town of Swannanoa would consider including in their articles of incorporation (or entering into an annexation agreement) that would limit their ability to annex, voluntarily or involuntarily, outside the proposed boundaries. In response, Swannanoa representatives did not feel that they, as volunteers and not elected officials, could fairly represent other citizens' interests in this request; however, they did indicate that they would consider making a recommendation to a future town council that an agreement with Asheville should be considered and expressed some willingness to consider a committing to delaying any annexation efforts for a period of time to allow an agreement to be developed. They verbally commit to not pursuing any annexation in this area in the relatively near future (next two years) in order to allow the opportunity for the municipalities to have that regional growth management discussion.

At the March 25, 2008, meeting where previous consideration occurred, legal and process issues were explained as to why the City of Asheville is being requested to consider this matter.

Pros:
- Would allow for Swannanoa to have a degree of self governance
- May help contribute to regional partnerships

Cons:
- Size of area and potential delivery of service problems
- Supports a trend of rural incorporations without regional planning
- Financial impact (loss of opportunity for revenue through fire service)

City staff requests City Council consider the information contained in the staff reports and presentations offered by the Swannanoa representatives and make an appropriate motion with respect to the proposed resolution.

Should the Council choose to support the adoption of the resolution – staff would encourage the Council to request a commitment from the Task Force as to a statement whereby, if the City agreed to do the same, they would agree not to annex into the Highway 70 area for a period of two years to allow for the future elected Town Council to negotiate a "Sphere of Influence" annexation agreement with Asheville. (City staff did not foresee City of Asheville annexation into this area in the near term.)

Ms. Tuch said that minutes before this meeting started they received some information from the Task Force about some concerns about the resolution. Two of their three concerns can be very easily addressed. The first concern was a specific reference to the NCGS - Asheville listed one and the Task Force felt it should be a different one. Staff will make the necessary adjustment if warranted. The second concern had to do with clarifying that they have not yet filed the petition to the Joint Legislative Commission on Municipal Incorporation. That is a staff error

and was misunderstood. The Task Force requests the City's resolution be amended to direct the City Attorney send a certified copy of the resolution to the Task Force, not the Joint Legislative Commission. Staff will make the necessary adjustment, if appropriate. Both of those amendments staff has no concern over. The Task Force's third concern was the expression of concerns in Asheville's resolution. Staff feels that they have brought those concerns to Council's attention and if it's Council's will to remove those concerns from the resolution, staff will follow-through on that amendment as well. Staff will leave that to Council's discretion.

The following individuals spoke in support of the Asheville's resolution supporting the Town of Swannanoa's incorporation (with modifications to the western boundary outlined by City staff and with the following three amendments to the Asheville resolution: (1) the change to the specific NCGS; (2) the certified copy being sent to the Task Force; and (3) the elimination of the three concerns of Swannanoa's incorporation effort) for several reasons, some being but are not limited to: creation of jobs through economic development; leverage of funds to develop affordable housing; basic core services, specifically street lighting; Task Force has received only one request to be removed from the petition and that person did not reside in the proposed boundaries; residents wish to control their own destiny and improve their community; residents were not forced to sign incorporation petition; and Swannanoa residents want to plan their own vision:

Mr. Dave Alexander, member of the Swannanoa Incorporation Task Force
Ms. Linda Kinney, Swannanoa resident and member of the Swannanoa Incorporation Task Force
Mr. Mike Tolley, business owner in Swannanoa and member of the Swannanoa Incorporation Task Force
A resident of Swannanoa
Ms. Janet Jones
Ms. Carol Groben, member of the Swannanoa Incorporation Task Force

The following individuals spoke against Asheville's resolution supporting the Town of Swannanoa's incorporation, for several reasons, some being, but are not limited to: there is nothing in the statutes that requires a vote of the people; the petition to incorporate is invalid as workers were told that Asheville as going to annex Swannanoa in a matter of months; several people who signed the pro-incorporation petition have since requested their names be removed; the Swannanoa Incorporation Task Force will not accept the letters requesting names be removed from the petition; the Task Force has understated the proposed budget; three committees have already been formed but their services are not included in the incorporation budget; City and County should consolidate; request an additional concern be added to Asheville's resolution of allowing the owners of the large rural mountain areas have the option of not being annexed; rural areas will not benefit from street lights, sidewalks, etc. but have to pay taxes; frustration with trying to contact the Task Force to discuss positions; requests to have large tracks of undeveloped land excluded from proposed incorporation boundaries; and would support incorporation of the center of Swannanoa and not people who live in outlying areas who will receive no benefit but will have to pay taxes:

Mr. Eric Gorney, Swannanoa resident representing Swannanoa Truth
Rev. Christopher Chiaronmonte, Asheville resident
Mr. Colin Roberson
Ms. Nancy Dugan, owner of over 200 acres of a large rural mountain area
Ms. Hoffman, Swannanoa resident

Mayor Bellamy closed the public hearing at 8:28 p.m.

Councilman Newman was concerned about the incorporation of people who own large undeveloped tracks of land miles from the center of Swannanoa. Mr. Alexander responded that they were advised by the School of Government to keep the boundaries as simple as possible. The proposed boundary is already drawn (Swannanoa Fire District) and changing those

boundaries would require a survey which would be expensive. They do not have the resources to survey land to be excluded. If Mr. Roberson and Ms. Dugan (one piece of property) pay for the survey to exclude their property from the proposed incorporation, then that can be worked out.

Councilman Mumpower feels it is up to the people to determine the outcome for their community and that would require a referendum. However, the Asheville resolution makes no reference of a referendum. If there is not a referendum, then this is nothing more than forced annexation. Ms. Tuch said it was her understanding that Asheville cannot require a referendum.

In response to Councilman Mumpower, Assistant City Attorney McGlohon said that she would have to research whether Asheville's resolution of support can be conditioned upon a referendum.

During a brief discussion about the budget and in response to Councilman Mumpower, Ms. Tuch said that staff's concern about their anticipated cost and revenue picture is based on Asheville's own experience.

Ms. Groben, attorney not licensed in North Carolina, said that the statutes do not address the issue of referendum. She felt Asheville could adopt the resolution of support of Swannanoa's incorporation conditioned upon there being a successful public referendum in support of incorporation. To prevent further delay, she urged City Council to adopt that language at this meeting with said language being conditioned upon approval by the City Attorney.

Councilwoman Cape felt that a small Town of Swannanoa makes sense, but expressed concern over the size proposed by Swannanoa. She supported the resolution with the concerns laid out. She also supported having a condition allowing people to opt out of incorporation, like Warren Wilson College and the Cove had the opportunity to do.

Councilman Newman moved to adopt a resolution regarding the proposed incorporation of the Town of Swannanoa as presented by City staff (including the three concerns in the resolution) with the western boundary resembling the existing zip code boundary (because there is no understanding about where Asheville will grow in the future), and subject to (1) the City Attorney determining if the correct statute is cited; (2) the City Attorney determining where to submit the certified copy of the resolution; (3) an additional concern in the resolution "We encourage the Swannanoa Incorporation Task Force and the Joint Legislative Commission on Municipal Incorporation to consider excluding or giving an option for exclusion the large rural tracts on which there are no current planned developments to be included in the proposed Township; and (4) the City Attorney be directed to develop language in the resolution to underscore that Asheville's support is conditional upon a referendum. This motion was seconded by Councilwoman Cape.

Councilwoman Cape asked for a friendly amendment that the motion be amended to include the following language (underlined) "In order to preserve the natural character and conservation of our mountains, we encourage the Swannanoa Incorporation Task Force and the Joint Legislative Commission on Municipal Incorporation to consider excluding or giving an option for exclusion the large rural tracts on which there are no current planned developments to be included in the proposed Township." Councilman Newman accepted the friendly amendment.

In response to Councilman Russell, Ms. Tuch said that if the current City limits were the zip code boundary on the western edge, the property that Swannanoa wants to incorporate would not qualify for annexation by Asheville or by Swannanoa, primarily for lack of density and urban level of development.

Vice-Mayor Davis preferred to postpone action at this meeting until after the City Attorney has had an opportunity to review the language and concise language could be drawn up regarding the referendum.

Mayor Bellamy asked for a friendly amendment to the motion that the western boundary be the existing zip code boundary only in the proposed area for incorporation. Councilman Newman and Councilwoman Cape accepted that friendly amendment.

Assistant City Attorney McGlohon felt it would be appropriate for Council to get clear direction from the City Attorney in determining whether or not the language in the motion would constitute an approval or a rejection by the Joint Legislative Committee as from a process standpoint, there is a legal distinction.

In response to Councilman Mumpower, Mr. Alexander said that a two-week delay would not materially affect their work. Mr. Alexander did, however, express concern over the zip code boundary as proposed by Asheville as it would exclude the historical graveside of Samuel Davidson (regarded as the first settler west of the Blue Ridge) which has a particular significance to Swannanoa.

Mayor Bellamy noted that if this action is delayed for two weeks, it will be added to an already heavy May 27 agenda. As a courtesy, she said that if it is continued, she would place it prior to the public hearings.

Councilman Newman recommended Council vote on the motion on the floor and after the City Attorney reviews the language and determines that it is very likely that it will trigger a negative recommendation, that Council should revisit it again so it is not interpreted as a negative recommendation.

Councilwoman Cape withdrew her second to the motion because Asheville's key interest is the western boundary being the existing zip code boundary and the Task Force disagrees with that.

Councilman Newman withdrew his original motion.

Councilman Newman moved to adopt a resolution regarding the proposed incorporation of the Town of Swannanoa as presented by City staff (including the three concerns in the resolution) with the western boundary resembling the existing zip code boundary, and subject to (1) the City Attorney determining if the correct statute is cited; (2) the City Attorney determining where to submit the certified copy of the resolution. This motion was seconded by Councilwoman Jones and failed on a 3-4 vote, with Mayor Bellamy, Councilwoman Jones and Councilman Newman voting "yes" and Vice-Mayor Davis, Councilwoman Cape, Councilman Mumpower and Councilman Russell voting "no."

Councilman Newman moved to continue this matter until May 27, 2008.

After a short discussion, Mayor Bellamy suggested the matter be reconsidered at the June 17 worksession, noting that action would be taken on that date.

At the request of Mayor Bellamy, Vice-Mayor Davis said that the City Council Planning & Economic Development Committee would meet with the Swannanoa Incorporation Task Force to see if a compromise on the western boundary could be reached.

Councilwoman Jones wanted to make sure that the statement regarding options for exclusion of large rural tracks is listed as an additional concern and the referendum is a condition of support.

The motion made by Councilman Newman and seconded by Councilman Russell carried unanimously.

B. RESOLUTION TO APPROVE (1) NEW CO-SPONSORSHIP APPLICATION AND CRITERIA FOR CO-SPONSORED EVENTS; AND (2) OUTSTANDING

LIST OF CO-SPONSORED EVENTS FROM AUGUST 1 – DECEMBER 31, 2008

Diane Ruggiero, Superintendent of Cultural Arts, said that this is the consideration of a resolution authorizing the City Manager to approve the administrative procedures for co-sponsored events, the approval of $129,306 for funding of events from August 1 through December 31, 2008, and the approval of a total of $150,000 in co-sponsorship support for Fiscal Year 2008/09.

The City of Asheville co-sponsors events that benefit local non-profit organizations and enhance the community with public events, parades, and festivals. The City of Asheville co-sponsors public events, parades, and festivals that benefit local non profit organizations and enhance the community.

Going forward, the City of Asheville will issue a Request for Proposal (RFP) in the Fall of each year for organizations and individuals wishing to apply for a co-sponsored event. The RFP clearly outlines the program criteria and expectations. Prior to the RFP deadline, the City of Asheville will conduct a series of workshops to assist potential applicants through the application process.

Staff will review the applications, followed by the Recreation Board who will evaluate, score and rank all applications and make the final recommendation to City Council. Events with a high ranking will receive co-sponsorship support up to the amount approved by the City Council. After each event, applicants receiving co-sponsorship will submit an event evaluation report which will be considered in the event they should apply for support in the future.

Staff recently obtained additional event information from the remaining co-sponsorship applicants for 2008. Each event was scored from highest to lowest based on the event criteria presented to Council on April 5, 2008.

For calendar year 2008, the cost of proposed co-sponsored events was $312,000 of in-kind goods and services (increased by $67,000 to include support for the Holiday Parade and Friends of Pritchard Park). Staff recommends limiting the total cost to $150,000 of in-kind goods and services for co-sponsored events for each fiscal year beginning in Fiscal Year 2008-09.

The approval of $129,306 will provide support for the Holiday Parade, the Friends of Pritchard Park, Shindig on the Green, Festival in the Park, Downtown After 5 and Goombay. Occurrences for Shindig on the Green, Festival in the Park, and Downtown After 5 prior to August 1, 2008, have previously been approved by Council and staff recommends that the remaining occurrences be approved as well.

This will result in a balance of $20,694 for funding events from January 1 through June 30, 2009, for a total of $150,000 in co-sponsorship support for Fiscal Year 2008-09. Council may wish to include additional events by increasing the $150,000 co-sponsorship budget allocation.

Pros:

- Ensures co-sponsored events are aligned with the City's goals and vision
- Controls the amount resources allocated to co-sponsored events
- Allows the City to budget accordingly
- Defines the process and the goals to the applicants

Cons:

- Lowers the number of events
- Organizations will have to plan further in advance
- Organizations will have more paperwork to complete

Regarding the fiscal impact, $150,000 is from the general fund to cover direct cost (overtime, vehicles, etc.) and lost revenue (permit fees, water, etc.) for Fiscal Year 2008-09.

City staff recommends City Council adopt a resolution authorizing the City Manager to consider the administrative procedures and funding proposal for co-sponsored events in preparation for Fiscal Year 2008-09.

Mr. Jesse Ray, member of the Board of YMI Cultural Center, urged Council for their continued support of the Goombay Festival, which is an asset to the City, County and region.

After Vice-Mayor Davis spoke about the Oasis Shrine Parade and its huge economic piece, Ms. Ruggiero said that they have talked with all the event organizers to find ways to lower overall costs. She said that parades are expansive, because of police, fire, rescue support and street closures. She said staff did not talk to any other agencies to see if there would be support for them.

Vice-Mayor Davis moved to adopt the administrative procedures and funding proposal for co-sponsored events in preparation for Fiscal Year 2008-09(Holiday Parade, the Friends of Pritchard Park, Shindig on the Green, Festival in the Park, Downtown After 5 and Goombay). This motion was seconded by Councilwoman Cape.

Councilman Mumpower did not have any criticism of the events, but he didn't think Asheville should be in the business of selectively choosing what we like and don't like. More importantly, we are taking away from things that might be a better investment. He felt the events can raise money for themselves. Until we get the drugs out of housing units, he would vote against the motion in that those dollars could be spent more wisely.

Councilwoman Cape said that at the downtown master plan session, the community expressed support for festivals as they bring the community together, add a sense of safety in knowing each other and encourage the vibrancy of economic development of the community. She also felt we need to ask for partnerships with others in the community. She felt that ranking is a good process by which we look at the values and make some hard choices.

In response to Councilman Newman, Ms. Ruggiero said that every event will have to reapply each year for co-sponsorship funds.

In response to Mayor Bellamy, Ms. Ruggiero said that in addition to police, fire and street closings, other in-kind costs include the City's equipment. She said that the way this is structured, the City is going to ask the festival to pay for equipment fees as well. For instance, the stage is set up and taken down by the Parks & Recreation maintenance staff which may results in overtime hours if on a weekend.

Mayor Bellamy could not support the motion as these are deep cuts with very little notice. She felt that some people won't go to the Civic Center or worry about police protection, but they look forward to going to the, for example, AIDS walk, to promote their cause. It's disappointing to have all or none. Some groups don't ask for much from the City and she felt we are cutting out a lot of key events that the community looks forward to.

Councilman Mumpower suggested another approach might be to fund all of the co-sponsorship events that were funded last year, but reduce the City's participation by 50%.

The motion made by Vice-Mayor Davis and seconded by Councilwoman Cape failed on a 3-4 vote, with Vice-Mayor Davis, Councilman Newman and Councilman Russell voting "yes" and Mayor Bellamy, Councilwoman Cape, Councilwoman Jones and Councilman Mumpower voting "no."

City Manager Jackson said that this is not out of pocket expense, but in-kind services. It does, however, have an impact on overtime and would require the City to manage that. If it's Council's desire to co-sponsor more events, he will work with staff and come back with a brief follow-up recommendation in two weeks.

As there is the majority support of Council to cut the costs, it was the consensus of the majority of Council to instruct the City Manager to work with staff in trying to bring back some of the other groups back in without too much impact upon the budget and come back with a brief follow-up recommendation at the May 20 worksession, noting that formal action will be taken at that worksession on that item.

Councilwoman Jones felt like we must have some type of gate-keeping for costs for new events. She felt it was fair for groups, even non-profits, to contribute.

Mayor Bellamy said that the Housing Trust Fund has a good point system model in place that might be worthwhile to review.

VI. NEW BUSINESS:

A. WATER LINE EXTENSIONS TO THE OAKS SUBDIVISION

Water Resources Director David Hanks said that this is the consideration of participation with Buncombe County to extend water services to the Oaks subdivision in the Mills Gap community of southern Buncombe County. The Buncombe County Commissioners voted unanimously today for their participation on this.

Buncombe County government has been working closely with both the N.C. Department of Environment and Natural Resources (DENR) and the U.S. Environmental Protection Agency (EPA) regarding the CTS Plant site ground contamination issue. The Buncombe County commissioners recently voted to fund water extension for city water services to The Oaks subdivision, a 34 house residential community in unincorporated south Buncombe County, due to the concerns raised by this community about residential well contamination. County officials have requested any assistance from the city for water service extension, to include determining all costs associated with providing water services as outlined, and consideration of fee waivers and cost reductions where possible. In recent weeks, EPA and DENR have found three wells, serving a total of seven residential homes in this subdivision, to be contaminated.

City staff has completed this work, to include seeking an outside bid from APAC to provide necessary paving for the water line extension. Those estimates are as follows:

1) Cost for materials and supplies for water line installation:	$ 87,719.11
2) APAC paving bid:	$ 94,514.00
3) NCDOT (milling roads and boring under Pinner's Cove)	$ 43,590.00

Total Cost to **Buncombe County** for Water Line Installation: $225,823.11

In addition, the city has the ability to waive of the following fees & costs:

1) Water fee waivers:	$37,162.00
2) Labor costs absorbed by the Water Department:	$41,712.55
3) Equipment/vehicle costs absorbed by the Water Department:	$21,584.50
4) Engineering survey site design costs:	$ 3,000.00

Total Costs Waived and/or Absorbed by the **City of Asheville**: $103,459.05

It should be noted that if approved, staff estimates eight weeks to complete this project.

Pros:

- This service extension will eliminate residential well usage in the Oaks subdivision community, which addresses groundwater contamination issues.
- This partnership with Buncombe County aligns with the City Council Strategic Goals, specifically positive intergovernmental relations with sister local governments.
- There is no other long term viable solution for water service in this residential area.

Cons:

- The Water Resources Fund is absorbing $103,459.05 in one-time capital installation costs and related fees.
- In the event of further contamination in this general area, other residential communities may request water service and cost waivers.

Regarding the fiscal impact, the water utility would absorb costs totaling $66,297.05 and forego revenue of $37,162.00. This action also potentially sets a precedent for future service extensions to areas served by wells.

Staff recommends expediting this project in coordination with county officials given the public health issues associated with the CTS site contamination issues. In doing so, staff is prepared to implement this project as materials/supplies costs only to Buncombe County Government.

In response to Councilman Mumpower, Mr. Hanks said that Buncombe County is proposing a policy through the Health Department that any and all wells in the vicinity will be tested for health issues.

Mr. James Wilson, resident in the Oaks Subdivision, urged Council's support as his is one of the wells contaminated.

Councilwoman Cape said that understands that the company who created this contamination had pre-knowledge of that contamination. She wondered if there are options for the City to get that company to help re-coup the funds expended by the City and the County for this water line installation. Mr. Hanks said that the County has been working through the EPA and NCDENR and with the CTS owners for the last year to come up with funding options and they have not been forthcoming.

In response to Mayor Bellamy, Mr. Hanks said that after the lines are installed, they will become City of Asheville water lines.

Mayor Bellamy appreciated City staff's efforts to work in cooperation with Buncombe County.

Councilman Mumpower moved to expedite this project in coordination with county officials given the public health issues associated with the CTS site contamination issues, with the City waiving all fees and costs. This motion was seconded by Councilwoman Cape and carried unanimously.

B. RESOLUTION NO. 08-101 - RESOLUTION APPOINTING A MEMBER TO THE SUSTAINABLE ADVISORY COMMITTEE ON ENERGY AND THE ENVIRONMENT

Vice-Mayor Davis said that this is the consideration of appointing a member to the Sustainable Advisory Committee on Energy and the Environment.

Ms. Tabetha Reyes has resigned as a member of the Sustainable Advisory Committee on Energy and the Environment thus leaving an unexpired term until December 31, 2008.

On March 25, 2008, City Council interviewed Melanie Brethauer, Brandee Boggs, Marcus Renner, Ashley Featherstone, Kristin M. Peppel and Daniel Asher. Ms. Brethauer was appointed to the then vacant seat. Ms. Ashley Featherstone and Mr. Daniel Asher each received one Council vote.

At the April 22, 2008, Board/Commission meeting, the Committee recommended Council re-vote for either Ashley Featherstone or Daniel Asher to fill Ms. Reyes unexpired term.

After Council spoke highly of the candidates, Ashley Featherstone received 3 votes and Daniel Asher received 3 votes. After a revote was taken, Ashley Featherstone received 4 votes and Daniel Asher received 2 votes. Therefore, Ashley Featherstone was appointed to serve the unexpired term of Ms. Reyes, term to expire December 31, 2008, or until her successor has been appointed.

RESOLUTION BOOK NO. 31 – PAGE 171

C. RESOLUTION NO. 08-101 - RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE-BUNCOMBE HISTORIC RESOURCES COMMISSION

Vice-Mayor Davis said that this is the consideration of appointing members to the Asheville-Buncombe Historic Resources Commission. There are requirements that must be met for the appointments. He said that since there will be a third appointment up next month, Council can (1) make both appointments tonight and readvertise for the new vacancy next month; or (2) appoint the landscape architect at this meeting and make two appointments next month.

Lupe Perez has resigned from the Historic Resources Commission, thus leaving an unexpired term until July 1, 2009. In addition, Amanda Warren has moved into Buncombe County, thus leaving another unexpired term until July 1, 2009.

On April 15, 2008, City Council instructed the City Clerk to arrange interviews for Brad Brock, Beth Gillespie, Scott Taylor and Dorothy Herbert. Ms. Herbert was unable to attend the interview.

After Council spoke highly of the candidates, Brad Brock received 3 votes; Beth Gillespie received 7 votes; Scott Taylor received 3 votes; and Dorothy Herbert received no votes. After a revote, Brad Brock received 4 votes and Scott Taylor received 2 votes. Therefore, (1) Brad Brock was appointed to serve the unexpired term of Mr. Perez, term to expire July 1, 2009, or until his successor has been appointed; and (2) Beth Gillespie was appointed to serve the unexpired term of Ms. Warren, term to expire July 1, 2009, or until her successor has been appointed.

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D. RESOLUTION NO. 08-102 - RESOLUTION APPOINTING A MEMBER TO THE RIVER DISTRICT DESIGN REVIEW COMMITTEE

Vice-Mayor Davis said that this is the consideration of appointing a member to the River District Design Review Committee.

The term of Ken Fulford (design professional) expired on September 1, 2007.

On April 15, 2008, City Council instructed the City Clerk to arrange interviews for Mark Allison and Gregory Sills (depending on whether Mr. Sills held a license). Ms. Sills did not hold a license and understood the "design professional" vacancy.

It was the consensus of Council to appoint Mr. Allison to fill the design professional vacancy left by Mr. Fulford, whose term will expire September 1, 2010, or until his successor is appointed.

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When Vice-Mayor Davis stressed the importance of Council members attending the Board & Commission interviews, Councilman Mumpower suggested the Boards & Commissions Committee discuss this in that there may be a way for three members of Council to conduct the interviews.

E. CITIZENS-POLICE ADVISORY COMMITTEE

Councilwoman Cape moved to instruct the City Clerk to prepare the proper paperwork for the May 27, 2008, Consent Agenda, to appoint Cedar Romero to the Citizens-Police Advisory Committee as the west representative. This motion was seconded by Mayor Bellamy and carried unanimously.

VII. OTHER BUSINESS:

A. FUTURE STAFF REPORTS

It was the consensus of Council to have the Council staff reports contain information regarding recommendations from the applicable Board/Commission, if appropriate.

B. CLAIMS

The following claims were received by the City of Asheville during the period of April 18 – May 8, 2008: Jennifer White (Water), Scott Green (Sanitation), Jeff Richardson (Parks & Recreation), Mildred Gantt (Water), Chris Manderson (Streets), Marlene Pollack (Streets), Marisa Thomas (Streets) and Morgan Loromer (Parks & Recreation).

These claims have been referred to Asheville Claims Corporation for investigation.

C. LAWSUIT

The City was served with a Notice of Contested Case and Assignment from the Office of the Administrative Hearings on April 14, 2008, regarding Jeannie L. Day vs. City of Asheville. The nature of the proceeding is an administrative hearing contesting validity of the animal control fine. This matter will be handled in-house.

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. David Allen Wilson spoke to Council about police misconduct and his request for citizen detention. Mayor Bellamy asked City Manager Jackson to meet with Mr. Wilson regarding this issue.

Mr. Mike Fryar spoke to Council about the shuttle service to UNC-Asheville on May 2, 2008, during Michelle Obama's visit to UNC-Asheville. He questioned what the decision-making process is for these types of actions, were other campaign candidates given this same consideration, what the cost of service was for the two buses and the ridership level. Councilman Mumpower also asked for a brief legal review of this incident. Councilwoman Cape was pleased that we have staff getting ahead of a problem, but would like to understand the process by which this moved forward. Mayor Bellamy asked City Manager Jackson to have Director of Transportation and Engineering Cathy Ball supplement her response of May 12, 2008, given to Mr. Fryar.

Rev. Christopher Chiaronmonte spoke about the homeless issue in Asheville and urged Council to investigate why the public restrooms are closed on Sundays. He said if the City continues to make Pritchard Park a war zone against the homeless, the homeless will trash Asheville in 3-4 years. Mayor Bellamy asked City Manager Jackson to investigate the hours of operation of the Haywood Street restrooms and if AHOPE is operating pursuant to their contract. She said it would be disappointing to have our homeless community doing the types of misbehavior that Rev. Chiaronmente represented here tonight, looking at the investment this Council has made in trying to provide services for the homeless. She hoped we can work through AHOPE and/or the Rescue Mission to assure the homeless that the City is not their enemy, but partners to ensure our homeless has services. The Asheville-Buncombe Community Christian Ministry has committed to work diligently that there be no homeless veterans in our community. Among others, Mountain Housing Opportunities is working with wrap-around services for individuals who are homeless.

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 10:30 p.m.

Magdalen Burleson
CITY CLERK

Terry M Bellamy
MAYOR

Tuesday – May 20, 2008 - 3:00 p.m.

Worksession

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; Councilman William A. Russell Jr.; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Councilman Brownie W. Newman

BUDGET REVIEW

Budget Director Tony McDowell said that the second Fiscal Year (FY) 2008-09 budget worksession is scheduled for May 20, 2008.

Mr. McDowell presented the following overview of the FY 2008-09 Recommended Budgets for the City's seven Enterprise Funds, as well as provided City Council with further information on the proposed FY 2008-09 General Capital Improvement Program.

Water Resources Fund:

- The FY 2008-09 budget includes a 4% increase in water rates which will generate approximately $800,000 in revenue.
- The Capital Outlay category includes funding for mandatory capital improvement projects, rolling stock, and small capital equipment. The budget includes a $3.5 million fund balance appropriation to fund the Brevard Road N.C. Dept. of Transportation project.
- The debt service for FY 2008-09 is 21% of the total budget. The increase in debt service is due to the recent issuance of $40 million in revenue bonds for capital improvements.

Transit Services Fund

- Increases in State grant funding are offset by a $160,000 decrease in funding from the federal government. As a result the federal/state grant revenue category shows almost no increase over FY 2007-08.
- Operating costs show a $340,000 increase due to higher contract costs for labor and increasing fuel prices.
- As a result of the higher operating costs and the lack of growth in grant funding, the subsidy required from the General Fund shows an increase of $290,000. Also, in order to balance the Transit Fund budget, $100,000 that had been previously set aside for capital improvements to the transit system will be transferred back to support operations. The proposed budget also continues the $248,116 transfer from the Parking Services Fund.

Parking Services Fund

- Debt service on the existing decks is being paid off in FY 2007-08. The FY 2008-09 budget includes $500,000 to pay what is expected to be a half-year's debt service payment on a new $18.5 million Biltmore Avenue parking deck, which is budgeted in the

Parking Fund's Capital Improvement Program (CIP). The deck will be financed with a combination of tax exempt and taxable bonds.

- The Parking Fund's CIP also includes $532,000 to fund major repair and restoration work on the Wall Street garage, which is now twenty years old. This project will be funded with a transfer from the Parking operating fund. The Parking operating fund will also provide $50,000 to fund wayfinding signs and $34,000 for security camera in the garages.

- The 2008-09 budget continues the $248,116 transfer to the Transit Services Fund.

- Approximately $460,000 in the FY 2007-08 budget is set aside to go to fund balance for future parking deck construction costs.

Stormwater Utility Fund

- The revenue budget for utility charges is adjusted to reflect actual collections from FY 2006-07.

- Otherwise, the budget reflects a continuation of existing programs & services.

Civic Center Fund

- The budget for operating revenue is adjusted upward by 11.6% to reflect revenue trends observed over the last two fiscal years.

- Operating costs were kept flat to help balance the budget.

- With operating revenues adjusted upward and operating costs kept flat, the General Fund subsidy was reduced by $33,209.

- Otherwise, the budget represents a continuation of existing programs & services.

Festivals Fund

- A general fund subsidy of $162,675 is included to support the costs of the Festivals staff. This subsidy is reduced from FY 2007-08 because more cultural arts staff is being directly accounted for in the General Fund.

- Otherwise, the budget represents a continuation of existing programs & services.

Golf Fund

- The proposed budget includes additional revenue from increases to the passholder fees and greens fees that Council approved in April.

- The proposed expenditure budget includes cost increase for personnel and utilities.

- Even with the Council-approved fee increases, a $75,701 General Fund subsidy is required to balance the FY 2008-09 budget.

Mr. McDowell then reviewed the enterprise fund summary.

At the May 13 budget worksession, Council requested more information on the proposed FY 2008-09 General Capital Improvement Program. He reviewed the following Proposed Budget

Document that provides greater detail on the Capital Improvement Projects (CIP) that staff has recommended for funding in FY 2008-09.

- The proposed CIP includes $1.8 million in funding for vehicle replacement. This level of funding will allow for the replacement of approximately 16 vehicles including an aerial ladder in the Fire Department; as well as vehicles in the Police, Public Works, and Parks Departments. The City will take advantage of lower interest rates to finance all of the vehicle replacements that are budgeted in the general fund in FY 2008-09.

- The technology improvements category includes $535,000 of which $335,000 will go toward the ongoing replacement of public safety radios. The remaining $200,000 will be used to fund technology improvements to aid the development review process. The funding for these improvements will come from the development review technology fee that Council approved in April. The technology improvements funded with this fee will allow the City to serve the development community better by offering, for example, paperless systems in the future. This will benefit the development community fiscally in the future, serving to reduce operational costs on a project -- such as printing out multiple blueprints for submittal to City staff.

- The facility & equipment maintenance category includes $535,000. Of this amount, $225,000 will be used for ongoing City-wide general building needs. Another $200,000 will go to enhance security at City-owned facilities. The facility & equipment maintenance category also includes $48,000 to replace old equipment used in the production of programming for the City's government television. Funding for this item comes from the PEG revenue that is received as a part of the video (former cable franchise) services taxes collected by the State and shared with municipalities.

- The FY 2008-09 CIP continues the City's commitment to provide $400,000 annually to fund projects at the Civic Center. Projects slated for next fiscal year include upgrades to arena seating as well as, replacement of the portable stage, emergency lighting generator, and chair storage.

- The CIP includes an ongoing contribution of $952,300 to the Street & Sidewalk Fund for maintenance & repair of existing streets & sidewalks.

- The CIP includes funding for two major land purchases, one in Haw Creek and the other for the Beaucatcher Overlook Park. City Council previously voted to authorize acquisition of property in the Haw Creek area for park purposes and a greenway link to the Blue Ridge Parkway and Mountain to Sea trail. The cost of the property is $750,000. The City will fund one-third of the purchase price ($250,000) with Buncombe County and the neighborhood association funding the remaining amount. The CIP also includes funding for the second installment payment for the purchase of land for the Beaucatcher Overlook Park. The exact amount that the City will owe toward the $900,000 payment will depend upon the amount of private funding raised by the Trust for Public Land. The CIP provides budget authorization up to $900,000 for this payment. Funding for both of these land purchases will come from proceeds that the City expects to receive in FY 2008-09 from the sale of City-owned property.

- The Parks & Recreation CIP includes $345,500 for Phase II of the Reed Creek Greenway project. This funding, along with the $400,000 NCDOT grant that Council approved at their May 13th meeting, will allow for completion of this phase of the Reed Creek Greenway project.

In summary, regarding capital improvements (1) fleet management - $1,793,600 (a) replaces 25-year old fire aerial ladder: $1,100,000; and (b) increased use of financing; (2) street and sidewalk maintenance - $952,300 (a) $200,000 for sidewalks; and (b) $752,300 for paving

and street maintenance; (3) Civic Center - $400,000 (a) $225,000 arena seating; (b) $125,000 replace portable stage; (c) $40,000 emergency generator; and (d) $10,000 replace chair storage; (4) Reed Creek Greenway Phase II - $345,500 (a) coupled with $400,000 N.C. Dept. of Transportation grant approved on May 13, 2008; and (b) will complete Phase II (from the corner of Broadway and Cauble Street to Broadway and Magnolia Avenue); (5) Overlook Park land purchase - $900,000 (a) 2nd installment payment; (b) City payment amount dependent upon the amount of private funding raised by the Trust for Public Land; and (6) Haw Creek land purchase - $250,000 (a) for park and greenway link to the Blue Ridge Parkway and Mountains to Sea Trail; (b) cost of the property is $750,000 (City funding one-third of the purchase price, with Buncombe County and the neighborhood association funding remaining amount); and (c) option exists to split into two $125,000 payments.

Staff recommends that Council review the FY 2008-09 budget information for the City's seven Enterprise Funds and the additional information provided on the General CIP; and provide direction on upcoming budget worksession agendas.

Throughout considerable discussion, Mr. McDowell, Chief Financial Officer Ben Durant and other Department Directors responded to various questions/comments from Council (noting that questions that could not be answered would be provided to Council at their next budget review). Some questions/comments were, but were not limited to: are the projects in the $40 Million revenue bond on track given increased construction costs; request for update on the status of the Civic Center roof (with information being shared with the Civic Center Commission as well) to include (1) the timeline for the Civic Center roof as it relates to when the Council first started the process up to the present date, (2) the cost of a green roof on the Civic Center vs. a traditional roof, (3) minutes of the City Council meeting where Council voted on the engineering study (which had to be done to determine the structural integrity of the roof) to include a cost estimate for a green room, and (4) how much of the engineering costs was the green roof effort opposed to only determining the structural integrity of the roof; regarding Overlook Park land purchase, (1) reasoning behind staff's $900,000 figure; (2) request for budget to more accurately reflect the City's commitment; (3) minutes and resolution of the Council meeting where this was approved, (4) list of finances associated with the Overlook Park project, (5) payment schedule of the three-year process, (6) confirmation that Overlook Park will be acquired by the neighborhood association and transferred to the City of Asheville with restrictions, and (7) investigate if the City has the option of paying $125,000 this year; is the City actively looking at programs for increasing summer ridership; is the Civic Center Garage repairs in this fiscal year's budget; explanation of the pattern of significant increases in staff wages in the Enterprise Funds; are temporary seasonal employees counted in the full-time employee number and are their salaries included in the salaries and wages line item; are market adjustment increases across the board for all employees; positions how does the $200,000 for sidewalks and $752,300 for paving and street maintenance in the CIP compare to this year's investment; reason for less money in this year's budget for parks and greenways; how much do we have right now in the Parking Fund to invest in a parking dack; is the $40 Million in revenue bonds in a variable or fixed rate; is the proposed 4% water rate increase a one-year increase or will there be multi-year increases; how can we convey to the community the list of projects from the $40 Million revenue bonds in order to show them how their investment is being used in repairing the water system; suggestion of sending a story to the newspaper with a picture attached showing crews working to upgrade our water infrastructure; reaffirmation of the City's commitment to keep the community informed; is the City continually looking at cost saving measures between the Public Works Department and the Water Resources Department projects; request for graph of how much we lost in federal investment in the transit system; why is there a decrease in the Parking Services line item in the Enterprise Fund summary; what is status of conversations with individuals about parking; will the City finance the full $1,793,600 in Capital Improvements for fleet replacement and if so, how much will that actually impact the budget; how many miles of sidewalk with $200,000 produce; confirmation that the loss of one sidewalk crew is only positions and no one will be laid off; consensus that all Enterprise Funds that have capital outlay expenditures, be listed with an addendum showing the breakdown; consensus that the CIP (which only shows the current budget year, next fiscal year

and 5 years out from that), show more history (perhaps two years); consensus on information whether we at the state maximum for the motor vehicle license fee and the rental vehicle fee, and request for a comparison with Buncombe County on those fees as well; has the Civic Center capital improvement projects for 2008-09 been reviewed by the Civic Center Commission; and consensus for Council deliberation at a future worksession, after this budget is adopted, about what we can do to make sure that the trend of magnifying salaries and wages do not get out of hand in order to be fair to taxpayers and City staff.

Commercial and Enterprise Options for Solid Waste Collection

Commercial Solid Waste Collection

Ms. Wendy Simmons, Solid Waste Manager, said that the City of Asheville provides once per week solid waste collection services via 95 gallon roll carts to all residents and businesses desiring this service each week. The only exception to this rule is that residents and businesses in the central business district are not serviced by 95 gallon roll carts due to space restrictions for collection equipment. As an alternative, these residents and businesses place their trash to the curb in bags or a trash can of their choosing that meets ordinance requirements.

Businesses desiring additional collections or a different method of collection than that provided by the City currently contract these services with private contractors. Multiple private contractors provide solid waste collection and disposal services throughout the City. Some of these contractors are national companies and others are regional or local enterprises.

Most cities in North Carolina do not provide services specifically for commercial customers; however, several cities are competing with private enterprises by providing commercial solid waste collection services. In December 2005, the North Carolina League of Municipalities reported in "What are we doing with garbage?" that 16.2% of cities collected commercial waste in 2005. Listed are 2008 data from a few NC cities providing commercial collection via dumpsters.

Municipality	Accounts	Trucks	Once per Week Collection Fee	Extra Collection Fee	Dumpster Rental Fee
Durham	~1,200	8 + spares	$85/month	$20.50	$26.50
Greensboro	3,386	15 + spares	$60/month	$50.00	NA
Hickory	250	3 + spare	$116/month	$23.00	NA
Statesville	395	3 + spare	$41.34/week	$41.34	NA

If the City of Asheville were to expand collection services to include commercial dumpster collection services, several critical factors must be examined. These factors include:

- Demand or need for additional commercial service
- Number of accounts to be serviced
- Collection frequency
- Cost for equipment
- Cost for staff
- Disposal costs
- Fee schedule for services

Before pursuing commercial collection services, the City would need to conduct a careful analysis of current commercial collection practices within the City and across the state. The next step after conducting surveys and data collection efforts would be to develop a business plan that would include a thorough approach to implementing commercial collections in the City.

Preliminary data can only be provided at this time regarding the benefits and costs of the City beginning a commercial collection program. Several options for pursing commercial collections are presented.

Option 1: The City could issue a sole franchise to itself for the provision of all commercial solid waste services within the city limits. This would entail a significant infrastructure conversion from the private sector to the City and could obligate the City to reimburse the private enterprises for economic loss (according to the School of Government). Such a business plan would be unprecedented in NC. The scope of the services offered by the City under this option would be wide and would entail highly niche services to meet the demand of all commercial clients. This could potentially entail multi-day collections, specialized collection containers, recycling collection services, medical waste collections, and other highly specialized services. Although this approach would require a substantial capital investment to initiate, it would establish the necessary economy of scale to make the commercial collection program highly efficient.

Option 2: The City could join the current commercial services market as an additional collection service provider. This approach would require the City to market itself aggressively to establish itself as a viable alternative to private collection companies. This approach would allow the City to gradually gain a market share with a lower initial capital investment than Option 1. However, the City would be fighting to gain clients with established contracts with private enterprises and could potentially never reach the economy of scale necessary to make the program truly efficient or profitable.

Option 3: The City could pursue issuing franchise agreements to commercial solid waste collectors with an associated licensing fee. Establishing a franchise fee for commercial solid waste collectors is not a customary practice in NC, but it is allowed under NC law. This practice is much more common on a national scale especially for larger cities. By pursuing this option, the City would still maintain oversight into the collection of commercial wastes without competing with existing private enterprises or actually providing commercial collections. To pursue this option, the City would need to develop an ordinance defining the franchise license process for solid waste commercial collectors in accordance with GS 160A-319. The ordinance would require any company that collects solid waste from commercial properties within the city limits to obtain a special license and pay an annual fee as a franchise fee. The fee could be established as a set fee or it could be tied directly to a company's annual revenues.

Estimating the costs of Options 1, 2, and 3 can only be done with preliminary data as expressed earlier. Costs of pursing Option 3 are administrative in nature and minimal in comparison with capital/personnel startup costs for Options 1 or 2. As a framework for the costs of pursuing Option 1, 2, and 3, the following tentative costs are delineated:

Option 1-City is Sole Franchise:

Estimated costs for Option 1, assuming 4,200 commercial accounts:
Initial capital investment

- Equipment:
  - $4,200,000 (20 collection trucks) = $840,000 per year (5-year lifespan)
  - $560,000 (7 container trucks) = $112,000 per year (5-year lifespan)
  - $3,780,000 (4,200 dumpsters) = $540,000 per year (7-year lifespan)

Total Equipment Costs: $1,492,000 per year

Annually reoccurring expenses

- Salaries: $1,200,000/year (30 drivers)
- Administration: $399,000/year
- Maintenance: $1,750,000/year
- Tip Fees: $4,200,000/year

Total Annual Reoccurring Expenses: $7,549,000 per year

Option 1	
Startup Capital Cost	$8,540,000 + ~$2,500,000 (estimated economic loss to private companies in accordance with NCGS)
Total Operating Cost per Year	$7,549,000
Estimated Annual Revenue	$8,568,000 ($170/month fee for twice per week collection)
Time to Recoup Initial Investment	~11 years

Option 2-City Competes with Private Haulers:

Estimated costs for Option 2, assuming 436 commercial accounts:
Initial capital investment

- Equipment:
  - $840,000 (4 collection trucks) = $168,000 per year (5-year lifespan)
  - $80,000 (1 container truck) = $16,000 per year (5-year lifespan)
  - $392,400 (436 dumpsters) = $56,058 per year (7-year lifespan)

Total Equipment Costs: $240,058 per year

Annual reoccurring expenses

- Salaries: $150,000/year (5 drivers)
- Administration: $76,000/year
- Maintenance: $181,700
- Tip Fees: $436,000/year

Total Annual Reoccurring Expenses: $843,700 per year

Option 2	
Startup Capital Cost	$1,312,400
Total Operating Cost per Year	$843,700
Estimated Annual Revenue	$889,440 ($170/month fee for twice per week collection)
Time to Recoup Initial Investment	~2 year

Option 3-Franchise Fee:

Estimated costs for Option 3 are administrative in nature and could be absorbed by current staffing levels. The estimated revenue for this option will depend on the fee structure for franchise licenses. Listed are two examples of potential fee schedules and total revenue estimates.

- $2,000/year/liscense, Estimated total revenue $10,000/year
- 2% of company's annual revenue/year, Estimated total revenue $50,000/year

Option 3	
Startup Capital Cost	NA
Total Operating Cost per Year	Negligible
Estimated Annual Revenue	$10,000-$50,000
Time to Recoup Initial Investment	Immediate

Residential Solid Waste Collection

Another alternative for solid waste collection is to convert the current general fund system to an enterprise system for residential collection services. Enterprise funds are self-sustaining funds supported by user fees to account for the management of the City's solid waste

management program. These user fees pay for daily operations, maintenance costs, and current and future capital funding.

An enterprise program would establish monthly fees for solid waste services that would be billed on the current water and sewer service bill. Residents of Buncombe County currently pay $14.00-$16.50 per month for limited solid waste collection (municipal solid waste and recycling only) services when compared to the City's more comprehensive solid waste collection and recycling services which include: weekly solid waste collection, bi-monthly brush collection, seasonal loose leaf collection, weekly white goods (i.e., appliance) collection, weekly bulky item collection, and every other week recycling collection. The following are estimates for enterprising the City's solid waste and recycling services.

Proposed fees:

Municipal solid waste fee • Weekly waste collection • 1 free roll cart • Bi-monthly brush collection • Seasonal loose leaf collection • Weekly white goods collection • Weekly bulky item collection • Dead animal collection	*$15.48/month
Recycling fee	$2.56/month
Combined total fee	$18.04/month
Additional fees: Extra trash cans	$3.50/month/can

*NOTE: $33/ton tip fee: $14.73
$42/ton tip fee: $15.48

Analysis

Following are key issues for consideration:

- Municipalities providing commercial collection services are uncommon.
- Options 1 and 2 would require high initial capital investments.
- Anecdotally, governments which provide commercial services are subsidized.
- Asheville currently has a highly competitive commercial waste hauling sector that offers the consumer multiple choices when selecting a private waste hauler.
- Reimbursements to commercial companies for loss of business would be substantial.
- Option 1 would result in critical loss of business among private waste collection companies.
- Option 1 would likely result in lawsuit(s).
- Option 2 assumes 10% market share, which is not guaranteed.

In conclusion, based upon my preliminary analysis, to implement Option 1 or 2 would require considerable capital, political will, and risk. Furthermore, research into current commercial operations by NC municipalities leads me to believe that no profitable public business plan exists. More research would be required if further interest in the options exists.

There was discussion of how the Commercial and Enterprise Options for Solid Waste Collection item was being brought to Council's attention. In summary, Council was not interested in pursuing commercial collection services or converting the current general fund system to an

enterprise system for residential collection services. Councilwoman Cape did think the City should be open to looking at what we are doing with waste in our community and how, on a regional basis, other communities are dealing with their waste management.

RESOLUTION NO. 08-103 – RESOLUTION AUTHORIZING THE CITY MANAGER TO APPROVE THE ADMINISTRATIVE PROCEDURES FOR CO-SPONSORSHIP EVENTS AND THE APPROVAL OF $175,102 IN FUNDING FOR EVENTS FROM AUGUST 1 THROUGH DECEMBER 31, 2008

Ms. Diane Ruggiero, Superintendent of Cultural Arts, said that this is the consideration of a resolution authorizing the City Manager to approve the administrative procedures for co-sponsored events and the approval of $175,101.16 in funding for the following events from August 1 through December 31, 2008 (without equipment and sanitation): Pritchard Park, Holiday Parade, Downtown After 5, Goombay, Shindig on the Green, Midday Musicals, Organicfest, Rockin the River Raft Race, Urban Trail Block Party, Asheville Greek Festival, CROP Walk, Smoky Mountain Toy Run, Buddy Walk, Asheville Citizen-Times Half Marathon, Thomas Wolfe 8K Road Race, Hard Lox Jewish Food Festival, WNC Run/Walk for Autism and Professional Cycle Races, Oasis Shrine Parade, Festival in the Park, AIDS Walk, Super Hero Race, Run for the Horses, Halloween Dog Festival, and End of Summer Family Fish Fry.

The City of Asheville co-sponsors events that benefit local non-profit organizations and enhance the community with public events, parades, and festivals. The City of Asheville co-sponsors public events, parades, and festivals that benefit local non profit organizations and enhance the community.

Going forward, the City of Asheville will issue a Request for Proposal (RFP) in the Fall of each year for organizations and individuals wishing to apply for a co-sponsored event. The RFP clearly outlines the program criteria and expectations. Prior to the RFP deadline, the City of Asheville will conduct a series of workshops to assist potential applicants through the application process.

Staff will review the applications, followed by the Recreation Board who will evaluate, score and rank all applications and make the final recommendation to City Council. Events with a high ranking will receive co-sponsorship support up to the amount approved by the City Council. After each event, applicants receiving co-sponsorship will submit an event evaluation report which will be considered in the event they should apply for support in the future.

For calendar year 2008, the cost of proposed co-sponsored events was $312,000 of in-kind goods and services (increased by $67,000 to include support for the Holiday Parade and Friends of Pritchard Park).

Staff recently obtained additional event information from the remaining co-sponsorship applicants for 2008. Each event was scored from highest to lowest based on the event criteria presented to Council on April 5, 2008.

By providing only essential services such as Police, Fire and Rescue while also continuing to waive permit fees for event organizers, the City can continue to support a large number of events that help meet City Council goals.

Provide essential services only

Non-essential services include:

Sanitation – Currently, sanitation services are only offered to City co-sponsored events. Other festival and events throughout the City either clean up their festival area with volunteers or

outsource the service to an outside agency at a cost lower than what the City can offer for the same service.

Organizations that do not comply with event clean-up will be issued a citation and would risk future City co-sponsorship support.

Equipment – The limited equipment provided by the City through co-sponsorship (i.e. tents, stage, tables, chairs, etc.) is in poor condition and quickly being removed from availability. The Department's funding to replace this equipment has been removed from the Fiscal Year (FY) 2008/09 budget.

By discontinuing this service for co-sponsorship, the City can retain the limited supplies for internal events and eliminate labor cost for equipment delivery and set-up.

Pros:

- These services do not affect all of the events;
- The cost to outsource these services is minimal and; in some cases, optional;
- By outsourcing services, the City helps to support local businesses who provide similar services;
- This process is relatively easy to administer and continue.

Cons:

- Organizers will receive reduced support from the City;

Parks, Recreation and Cultural Arts staff will also work with the organizers of the Oasis Shrine Parade to either reconfigure their event or suggest alternative funding resources to reduce the overall cost to the City.

Regarding the fiscal impact, the elimination of non-essential services reduces the cost of in-kind goods and services from $240,932.48 to $175,101.16 with a net savings of $65,831.32.

City staff recommends City Council adopt a resolution authorizing the City Manager to consider the administrative procedures and funding proposal for co-sponsored events in preparation for FY 2008/09.

Throughout considerable discussion, Ms. Ruggiero responded to various questions/comments from Council, some being, but are not limited to: who pays for the police at Civic Center events; how often are supplemental police officers required from a safety standpoint for Civic Center events and who pays for that; what was the criteria of public purpose used in the rating procedure; what is the bulk of the cost of parades; has staff talked to the event organizers of Goombay of this process of not providing non-essential services and will staff work with them to find other organizations to supplement the City's cost reduction; and how much money will be spent on co-sponsorship of festivals from January-June, 2008.

Councilman Mumpower didn't argue with festivals, but felt the City should first fund eliminating the open air drug market from a safety standpoint and then he could support entertainment.

Councilwoman Cape moved to suspend the rules and take formal action at this meeting. This motion was seconded by Councilwoman Jones and carried unanimously.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it will not be read.

Councilwoman Cape moved to adopt Resolution No. 08-103. This motion was seconded by Vice-Mayor Davis and carried on a 4-2 vote, with Mayor Bellamy and Councilman Mumpower voting "no."

Mayor Bellamy could not support the motion in that she didn't think all festivals were treated fairly. She noted that there was no cost reduction for the Pritchard Park events nor the Holiday Parade - both which are funded their requested amount. The two events (Downtown After 5 and Goombay) which rated 100% were reduced by the elimination of non-essential services. Ms. Ruggiero responded that the only reason why staff did not pursue the price reductions on the Pritchard Park events or the Holiday Parade was that they were approved by City Council independently of this process. At Council's direction, she said she would be happy to pursue cost reductions for those two events as well.

Councilman Mumpower moved to instruct staff to continue exploring cost-saving opportunities with all the identified festivals. After a brief discussion, Councilman Mumpower withdrew his motion.

Councilwoman Jones moved that the events that scored in the top 10% of the ranking, receive additional support of the City (by giving them their full request).

Councilman Russell liked the original motion in that he liked government doing things for people who can't do for themselves.

In response to Councilman Russell, City Attorney Oast said that it was his understanding that what Council adopted by a 4-2 vote remains in place and if Councilwoman Jones' motion passes, it would be in addition to that adopted motion.

Mayor Bellamy said that when she asked that we re-evaluate what was considered last week, because of the limited amount of festivals which would be co-sponsored, staff did a ranking independent of Council, she asked that for the groups who put forward their applications would be funded through acknowledgement of the ranking. But, staff is saying that they did an across the board cost reduction criteria that the City will not provide any non-essential services. That was not what she intended and she didn't support it. She was pleased that more festivals are being co-sponsored, but didn't like how it happened - a straight across the board cut. She felt that the two events that rated 100 (Downtown After 5 and Goombay) met all the City's criteria but were still given cost reductions.

Ms. Ruggiero said that because every event is completely unique, it was challenging to factor in the percentage, i.e., if the event scored an 80%, what is 80% of the funding for the event going to look like - and that became very subjective. In an effort to do their best to be fair to all events, they went back to what the City provides to co-sponsorship events. If there is an event that Council would like to see funded differently, she asked that Council vote on that event independently and they will work with those event organizers. They were looking for a procedure that they could take forward and follow year after year.

The motion made by Councilwoman Jones died for lack of a second.

RESOLUTION BOOK NO. 31 – PAGE 174

Closed Session

At 5:10 p.m., Councilman Mumpower moved to go into closed session for the following reason: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: State of North Carolina, County of Buncombe, City of Asheville, Bonny Wardlaw, Asheville Civil Service Board, City Council of the City of Asheville,

Peter M. Hall, et al (Ridgefield Business Park annexation area), and Asheville Endocrinology Consultants, P.A., et al (Airport Road annexation area) - The statutory authorization is contained in G.S. 143-318.11(a) (3), and (2) To consider the qualifications, competence, performance, character, fitness, conditions of appointment of an individual public officer or employee - The statutory authority is contained in G.S. 143-318.11(a)(6); and to prevent the disclosure of information that is confidential pursuant to G.S. 160A-168, the Personnel Privacy Act - The statutory authorization is contained in G.S. 143-318.11 (a) (2). This motion was seconded by Councilman Russell and carried unanimously.

At 5:55 p.m., Mayor Bellamy recessed the closed motion to return to the formal meeting, noting that the closed session would continue at the end of the formal meeting.

NON-PROFITS

Councilwoman Jones introduced Ms. Ann Von Brock, Vice-President for Planning and Community Investment with the United Way of Asheville and Buncombe County, and Past President of the N.C. Center for Non-Profits, who briefed and presented Council on an article from the N.C. Center for Non-Profits entitled "What Non-Profits Can and Cannot Do in an Election Year." She also reviewed with them information regarding a summary of the North Carolina Lobbying Law. She then reviewed nine frequently asked questions about the 501 (h) election, those being (1) what is a 501 (h); (2) why should a 501 (c) (3) election 501 (h) status; (3) how does a 501(c) (3) charity elect 501 (h) status; (4) will foundations suffer consequences if their grantees exceed lobbying limits; (5) under 501 (h), what is lobbying; (6) how much can a charity spend on lobbying under 501 (h); (7) will election of 501 (h) status increase the likelihood of an IRS audit; (8) will our paperwork increase if we elect 501 (h) status; and (9) what about losing a tax exemption for excessive lobbying expenditures under 501 (h).

On behalf of City Council, Mayor Bellamy thanked Ms. Von Brock for her informative presentation and urged the public to contact www.ncprofits.org for additional information.

PLANS & REPORTS IMPLEMENTATION STATUS

Mayor Bellamy said that as a result of comments about plans sitting on shelves and not being implemented, she placed this item on the agenda. Mayor Bellamy suggested, and it was the consensus of Council, to include prominent reference in staff reports how the actions relate to adopted plans, so people know that their time and investment as volunteers who have helped create the plan and the taxpayers who paid for the plans see how the plan is being implemented.

Councilman Mumpower felt that we do create elaborate planning documents filled with a lot of data. The percentage of the plans are fantasy plans and they are not based on realistic funding abilities. He believed that the majority of information in our planning documents is used occasionally.

Councilwoman Cape felt it also comes down to a willingness on this body's part to take those plans into consideration when votes are taken and it would be helpful to have those plans in front of Council when decisions are made.

Mayor Bellamy said that the following is the status of various plans and reports adopted since 2005:

- 10-Year Plan to End Homelessness (adopted 1-11-05)

  The Homeless Initiative Advisory Group completed strategic planning process for 2008 and is working to implement identified action steps. Additionally, the Homeless Coalition voted to become an integral part of the Homeless Initiative – their meetings have action

groups around housing, health, and services and the chairs of the Homeless Coalition sit on the Homeless Initiative Advisory Group.

Staff applied for and won a $10,000 technical assistance grant for 10-Year Plan Implementation. The funds are being used for research to evaluate the homeless service system and for improved public information and outreach. Work is expected to be completed by June 30, 2008.

SOAR demonstration project expected begin July, 2008 (SSI/SSDI Outreach, Access, and Recovery). A partnership between Buncombe County, the City of Asheville Homeless Initiative, Western Highlands, and Mission Hospitals as well as local non-profit service agencies has led to the commitment of funds and resources to the project.

Homeless Information Management System (HMIS) will be used by homeless service agencies receiving CDBG Funding and Buncombe County Funding. This will increase ability of the Homeless Initiative to understand characteristics, needs, and outcomes of the homeless population.

- Buncombe County Hazard Mitigation Plan (adopted 3-22-05)

  The City of Asheville's adopted Hazard Mitigation Plan was submitted along with the other six local government units in Buncombe County to the State of North Carolina and the United States Department of Homeland Security. The unified county mitigation plan was approved by the state and federal agencies and is scheduled for review again in the year 2010.

  The City of Asheville is required to adopt a Hazard Mitigation Plan by State and Federal law. Local governments in Buncombe County have recognized the importance of working cooperatively during emergency situations. Seven governmental entities in Buncombe County jointly developed a multi-jurisdictional hazard mitigation plan. Each of the seven local government units adopted the unified county-wide plan.

  Hazard mitigation is defined as "sustained action that reduces or eliminates long term risk to people and property from natural hazards and their effects". The Federal Mitigation Act of 2000 and North Carolina Senate Bill 300 require local jurisdictions to have prepared and adopted a Hazard Mitigation Plan in order to be eligible for certain types of disaster assistance for both Presidential and State-declared disasters occurring after November 1, 2004.

- Housing & CD Strategic Plan (adopted 4-26-05)

  The City and the Asheville Regional Housing Consortium are on track to meet most of the goals of this plan by 2010, despite cuts in the level of federal CDBG and HOME entitlement grants. Through fiscal year 2008, 623 housing units were assisted (including new construction, rehabilitation, homeownership assistance and rent assistance), which is 56% ahead of target.

- River Redevelopment Plan (adopted 7-26-05)

  The River Redevelopment Plan is a planning tool adopted by City Council in 2005 and based on ideas established in the Wilma Dykeman Master Plan. The city's River District, an established zoning district, contains over 873 acres, an area more than double the size of the CBD. The area is largely floodplain/floodway; as a result there are

development constraints that provide limitations on where and how development can occur in the River District and other floodplain areas of the City.

The River Redevelopment Plan concentrates on three different redevelopment areas: Biltmore Village, East Swannanoa River, and French Broad River. The plan outlines 12 areas of action, including: acquisition of floodway properties, demolition of flood damaged structures, pursue grant opportunities to implement the Dykeman Plan, continue to implement the Riverway project, and other action steps. Numerous city departments and outside agencies are involved in implementation of the recommendations. Highlights of accomplishments to date include the acquisition of three of four properties in the East Swannanoa area, demolition of flood damaged building in Koon Development area, greenway development in the French Broad area, and extensive hydraulic analysis of the river areas. Negotiations continue for other key acquisitions of property, and the City and other partners continue to discuss methods to focus resources and manpower on implementation of the Dykeman Plan.

- Downtown Parking Action Plan (adopted 11-14-06)

  The Downtown Parking Action Plan was adopted by City Council on November 14, 2006. Council approved thirteen different action tasks. Nine of these tasks have been completed or determined not to be feasible. We are currently working on locating public parking at 51 Biltmore Avenue, Rankin Avenue and two locations on Haywood Road. All of these projects are in varying stages of development. Staff will be coming forward to Council in August to recommend amending the parking action plan to include some other items such as developing a downtown shuttle.

- Civic Center Action Plan/CIP (adopted 12-12-06)

  The Civic Center Action Plan/CIP adopted on 12-12-06 is well underway. Staff is committed to ensuring timely completion of current and future projects. Phase I of the Arena Roof Study is nearing conclusion. Projects funded for Fiscal Year 2007-08 include Stand by Transformer, Smoke Hatches, and Fire Alarms. All are in progress, with anticipated completion August - October. Projects slated for Fiscal Year 2008-09 include Arena Floor Seating & Storage and Portable Stage. With the Civic Center Commission's guidance and approval, staff continues to fine tune the Action Plan.

- WECAN Citizens Master Plan (adopted 1-22-08)

  Mountain Housing Opportunities (MHO) has provided infill development that supports the WECAN Plan. Additionally, MHO received two grants from NCDOT to provide streetscape improvements to Clingman Avenue from Hilliard Avenue to the bridge. The City funded the remainder of the project in Fiscal Year 2006-07. A round-about gateway is designed for the intersection of Clingman Avenue and Depot Street. MHO held public meetings on the design. MHO will be completing the design and obtaining all permits. The City plans to bid the project and complete construction of the improvements.

- Comprehensive Bicycle Plan (adopted 2-26-08)

  The bike plan was adopted by City Council in February 26, 2008. We are currently implementing three projects from the plan including a climbing lane on Lexington Avenue, share the road markings on South French Broad Avenue and downtown bike lockers. We will continue to coordinate with other agencies as funds and or grant opportunities become available.

Staff provided this for information and further direction only.

PARK SEX OFFENDER BAN UPDATE

Vice-Mayor Jan Davis, Chair of the City Council Public Safety Committee, asked Police Chief Hogan to give an update to City Council on the park sex offender ban.

Police Chief Hogan said that the City Council passed Ordinance No. 3428 effective December 12, 2006, and via the Public Safety Council Committee, staff has been asked to provide a follow-up to this ordinance adoption.

At the January, 2008, City Council strategic planning retreat, Council adopted four priority areas of interest. One of the four areas was "Safe: Asheville will be one of the safest and most secure communities when compared to similar cities." Specific to that area of prioritization, City Council has stated that its intent is to maintain a park system that is meant for the peaceful enjoyment of children and other citizens. Recognizing that there are more than 200 registered sex offenders residing in Buncombe County, it is the interest of the City to reduce opportunities for sex offenders to make use of park and recreation for improper purposes.

Developments:

- A list of known predators and sex offenders is maintained by the Buncombe County Sheriff's Office and this information, to include a photograph, is now shared with the Asheville Police Department due to technology advances with Criminal Justice Information System.
- With this additional information, offenders can be charged with a felony if discovered that the sex offender has failed to register and is discovered in a city park or any other location in the city.
- The City hired a park ranger earlier this year, assigned to Pritchard Park. This position has bolstered the overall level of staffing (two positions overall) afforded to park management issues and has greatly impacted the overall level of safety and order in Pritchard Park.
- There has been one arrest to date since the adoption of this ordinance.
- The Town of Woodfin previously adopted a similar ordinance that has been legally challenged. The N.C. Court of Appeals upheld the Woodfin ordinance on the grounds that the ordinance was not an ex post facto law (i.e., a law that changes the punishment of a crime after the crime was committed) nor did the ordinance violate the sex offender's due process rights. One of the Court of Appeals' Justices dissented and the case is currently pending before the North Carolina Supreme Court.
- Park signage is currently being installed throughout Asheville's park system.

There is no action necessary at this time. This staff report is meant for information purposes only.

INTERNET PREDATORS DETECTIVE UPDATE

Vice-Mayor Jan Davis, Chair of the City Council Public Safety Committee, asked Police Chief Hogan to give an update to City Council on the internet predators detective update.

Police Chief Hogan presented the following updated information pertaining to child pornography and internet predator investigations and initiatives by the Asheville Police Department.

The Asheville Police Department has entered into memorandum(s) of understanding with the FBI and NC State Bureau of Investigation to assist in various computer crimes related investigations. Detective Johnson is currently working with the following task forces:

- Joined the FBI High-Tech Computer Crimes Task Force (HTCCTF) which investigates cases of child pornography. One Asheville-based case has already been referred to Detective Johnson.
- Joined the NCSBI Internet Crimes Against Children (ICAC) Task Force. This group works to identify, target, apprehend, and prosecute sexual predators whose purpose is to exploit children or engage in sexual activity with children through the use of computers and the Internet.
- Joined the FBI Cyber Crime Task Force which investigates criminal cases and national security threats when: computers and high technologies are the target of the crime, computers and high technologies are the principal instrument of the crime, or computers or high technologies are used to facilitate violations of criminal laws or breaches of national security.

As a result of this work, Detective Johnson has indicted two individuals in federal court on child pornography charges. Neither of these cases has been adjudicated, and we cannot publicly discuss them until prosecution is complete and a press release is issued by the federal press office. In one case, there were more than 5,000 images screened and 118 of these images have already been identified (victims) and prosecutions pursued.

Detective Johnson will also be requesting prosecution by the federal government on a third case where a cellular telephone salesperson at the Asheville Mall was using a cellular phone to take pornographic photographs of minors. This person was also furnishing alcohol and illegal drugs to minors that he could convince to come to his home. Detective Johnson continues to assist the NCSBI and BCSD with investigations targeting internet predators and individuals possessing and trafficking in child pornography.

On April 11, 2008, Detective Johnson completed the Seized Computer Evidence Recovery Specialist (SCERS) training at the Federal Law Enforcement Training Center.

Detective Johnson was also scheduled to attend the NC State Internet Crimes Against Children (ICAC) training on May 5-9, 2008. We had a preliminary position in this training, but have since been notified that Detective Johnson was not seated in the class. Detective Johnson cannot fully participate in the NC ICAC Taskforce until he completes this training. We have sought this training for over one year and may possibly retain a training position in a June 9-12 ICAC class that is being hosted in Asheville.

On February 21, 2008, Melissa Williams and Capt. Splain met with Mr. Grier Weeks of PROTECT – National Association to Protect Children. Mr. Weeks was concerned that APD was not actively engaged in internet predator investigations. It was explained to Mr. Weeks how we were participating in Federal child pornography investigations, but that we had not yet received training from the NC ICAC and could not fully participate in that taskforce until Detective Johnson had received ICAC training. APD is also a full service police department and Detective Johnson's expertise is utilized in internet fraud / scam investigations, white-collar crime investigations, and most other investigations where digital media is used in the commission of a crime. With only one trained investigator, we cannot solely conduct child pornography / internet predator investigations and ignore all others. Mr. Weeks was very understanding and has offered some other training and contacts within the ICAC specialty for Detective Johnson to take advantage of.

On April 5, 2008, the Asheville Police Department co-sponsored and participated in the Leadership Asheville (CyberBusters Team) Internet Safety Symposium. This symposium was held to inform parents, educators, and concerned citizens about the dangers of the internet and issues such as Cyber-Bullying. The program introduced the I-SAFE curriculum which assists parents and educators with protecting children who use the Internet. Approximately 150 adults attended the program at A-B Tech's Ferguson Auditorium.

As of May 9, 2008, Detective Johnson is assisting other APD Detectives with three new cases that involve child pornography and other sexual predator offenses. He is using his specialized training to mirror seized hard drives and extract digital information pertaining to these cases. Detective Johnson then creates reports for the prosecution of these individuals.

Vice-Mayor Davis said this is a great opportunity to be involved in other criminal activity with this detective. This is time and resources well spent. He also thanked the Asheville Police Department and the Buncombe County Sheriff's Department for working closely together.

In response to Councilwoman Jones, Police Chief Hogan said that he would like to see a partnership with the two schools, the Police Department and Sheriffs Department on the I-SAFE Program and he would be happy to pursue that partnership.

In response to Councilwoman Jones, Police Chief Hogan said that he would ensure the necessary ICAC training for Detective Johnson gets completed soon, and if necessary, seek assistance from Mr. Weeks.

Mayor Bellamy appreciated the Police Department's investment of dollars in the I-SAFE Conference, as they saw a need to support that initiative. She also thanked the Police Chief for sending staff to Knoxville, Tennessee, to reach out to best practices nearby in order to see what their initiatives are on child predators and internet safety. She noted the good relationship between the Police Department and Sheriff's Department in sharing resources and working together.

LOCAL ACTION ON ILLEGAL IMMIGRATION

Councilman Mumpower presented Council with the following PowerPoint presentation regarding local action on illegal immigration:

"Why Local Action? (1) Federal and State governments continued to be paralyzed; (2) Most problems are solved at the local level – as evidenced by our own history with the civil rights movement; and (3) Contrary to popular perception, law enforcement does have the authority to enforce Federal law – the real hurdle is motivation and support.

Why Am I Am Persisting on This Issue? (1) Illegal immigration represents the greatest law breaking scheme in America's history; (2) Illegal immigrants are the primary source of drugs distributed by young black males and purchased by white everybodies through our City's open air drug markets; and (3) Our community has lost the incentive to uplift our own due to the ready availability of high quality illegal labor. Why else would so many of us accept a 50-70% physical drop out rate for minorities in our High School and an even higher 'mental drop out rate' that assures the failure to bridge so many of our young people to the 'American Dream'?

Why Am I Persisting on This Issue? (1) I am disturbed by the institutional support for illegal immigration that occurs in our community (a) A local and national Chamber of Commerce that, per their policies, is more concerned with convenience than supporting the law; (b) A community hospital system that spends untold dollars with minimal protest on free services to illegal immigrants who are able to use the emergency room as their source of primary medical care due to unfunded Federal mandates; (c) A county and city school system that is spending $8,000 to $15,000 per year on the education of the children of illegal immigrants; and (d) A county government that is building a parking garage with a majority of workers who do not speak English.

Why Am I Persisting on This Issue? (1) A county health department and social services network that routinely accepts false identification and provides substantial and expensive services to illegal immigrants; (2) Employers who flaunt indifference to the legal status of their workers and thus create an unfair playing field for employers who do play it straight; (3) A local United Way

and other donor supported non-profit agencies that provide primary services to any and all non-English speaking people and thus helps support the flood of illegal immigrants crossing our border while limiting their capacity to care for our own citizens; (4) Churches who actively support illegal immigrants; and (5) A police administration that takes no meaningful action on illegal immigration.

It is not about race, the Hispanic people, or any other color issue…it is simply about those who come into our country illegally and those who illegally employ them.

There Are Other Reasons… (1) Public safety – no rules, no ID, and no accountability; (2) At best, illegal workers do only 25% of the "unwanted" jobs in this country – just enough to keep wages suppressed for a host of others jobs; and (3) Illegal immigration is a form or cultural terrorism – when people loose faith in the rule of law they stop playing by the rules – that is the foundation for a culture of selfishness and self-destruction…

What Is The Law? (1) Crossing our borders one time is a misdemeanor – more than once is a felony; (2) The use of false ID by an illegal alien is a felony; (3) Knowingly employing an illegal alien is a felony; (4) The only distinction between a misdemeanor and a felony offense is the length of potential jail time; any crime punishable with up to one year's imprisonment is a *misdemeanor*, while an offense punishable with more than one year is a *felony;* and (5) Courts have agreed that state and local police have inherent authority to enforce all federal immigration laws against violators, whether the violation is a civil or a criminal offense

What Can We Do – A Five Point Plan (1) Strengthen our employer education efforts on E-Verify system; (2) Send a resolution to our state and federal representatives requesting that they begin enforcing existing laws and grant local authorities greater enforcement support and flexibility; (3) Request that our city attorney monitor federal and state legislation affecting local government ability to respond to illegal immigration concerns and make ongoing recommendations on potential initiatives; (4) Instruct our City Manager to initiate APD participation in 287(g) of the Immigration and Nationality Act allowing for the appointment of at least two local officers with direct immigration enforcement powers; and (5) Explore city regulation of day labor agencies by requiring confirmation of citizenship for temporary employment.

Mexico's Illegal Immigration Laws (1) All foreign visitors must have the means to sustain themselves economically and not be a burden to society; (2) They can have no criminal record; (3) There is a government record of each foreign visitor; (4) Foreign visitors are banned from interfering in internal politics; (5) Foreign visitors who enter under false pretenses are imprisoned or deported; and (6) Those who aid illegal immigrants are fined and/or imprisoned.

Stepping forward through our limits…(1) I see illegal immigration as one of our culture's essential issues; (2) I believe we should look beyond what we are not sure we can do – to what we might can do; and (3) The state and federal example of complacency and paralysis is a model of disgrace.

The Responsibility - "My position on illegal immigration? It's illegal." – the late Congressman Sonny Bono"

Councilwoman Cape spoke with representatives at Mission Hospitals. She said that Mission Hospitals has been on the record for a long time about the need to address the uninsured issues in this community and how it's affecting them. They are hindered by the Federal Emergency Medical Treatment and Active Labor Act that requires Mission and all hospitals to treat anyone who presents themselves at the Emergency Room. She also talked to Bill Stafford, who works under John Creighton with the County, and they have said that American South, who is the contractor on their parking deck, actually verifies that every worker has an I-9 Form signed. She would not assume that everyone who speaks Spanish is undocumented or illegal. She has many concerns about some of the issues raised in suppression of wages and how we take care

of people who come here. She too would like to see the businesses and employment on a level playing field. Illegal immigration is a complicated issue and while there are things that we can do locally, it's at a scale that needs to be handled by the federal government.

Vice-Mayor Davis said that regarding the City's participation in the 287 (g) program, he felt sure that once the Buncombe County and the Henderson County Sheriff's Departments have reached agreements and are trained, he felt the Asheville Police Department will enjoy the same good relationship as currently exists. He said that he would place an update of the 287 (g) program on the City Council Public Safety Committee's agenda.

Councilman Mumpower said he is talking specifically about people who are here illegally. In terms of the County parking garage, he made a request for information but he does not believe the information given to Councilwoman Cape. He said he doesn't blame people from crossing the border, but he blames the employers, the people who side-step the law - they are the ones are trumping the whole process. We should not better their lives by destroying our own. He felt we have lost our incentive to take care of our own people. If both of the Sheriffs in Buncombe and Henderson counties feel there is merit to the 287 (g) program, why shouldn't Asheville participate.

Throughout discussion, Police Chief Hogan responded to various questions/comments from Council, some being, but are not limited to: does the City have more law enforcement officers than Buncombe County; if someone is arrested and they have no documentation, what happens; explanation of the 287 (g) program; what will it take to have a 287 (g) program for municipal governments; an do you feel that the City of Asheville needs a 287 (g) program or is Police Chief Hogan supportive of Buncombe County going the point.

Mayor Bellamy said that she just came back from a trip to Washington where she talked to Senator Dole's staff about the City's federal legislative agenda. She then read the following e-mail dated May 19, 2008, from Constantine Hingson, General Counsel in the Office of Senator Elizabeth Dole: "I just left a message on your voicemail regarding the 287 (g) program you and Mr. Bacus discussed this afternoon. This email will give you an overview of the program. Please do not hesitate to contact me with any further questions on this or any other matter. My direct line is ... Senator Dole has been working with federal officials and sheriffs across our state to address the issue of immigration enforcement. As a result of her work, North Carolina is the first state in the nation to have a statewide partnership plan for sheriffs to coordinate with Immigration and Customs Enforcement (ICE), part of the U.S. Department of Homeland Security. This plan will ensure that all North Carolina sheriffs can readily access, if they choose, the tools to identify and help process undocumented aliens who have self-identified themselves by committing crimes, such ad drunk driving and gang- and drug-related activities. The partnership program does not change how law enforcement officials go about their daily jobs enforcing laws in their communities. Once an individual self-identifies him or her self by committing a crime, at that time the tools would be used to access that person's criminal history and immigration status. 287 (b) refers to the section of the Immigration and Nationality Act that provides for provision of federal resources to state and local law enforcement to carry out immigration related duties. The North Carolina program is being implemented by a steering committee made up of sheriffs from around the state. The steering committee includes Sheriff Van Duncan of Buncombe County. Participation in the 287 (g) program does not cost local governments above and beyond what they already pay their deputies. Federal funds are used for both training and equipment. Senator Dole has fought and continues to strongly advocate for funding for ICE and implementation of 287 (g) agreements."

Mayor Bellamy said that while in Washington, she advocated for our federal legislative agenda. She said that illegal immigration is a very contentious issue for our community and she hoped that we can look at other ways to address this issue. If we are really concerned about employment, the number of contractors that the City of Asheville utilizes is outstanding and it would behoove us to look at this issue creatively. We need to empower people in a way to bring

up our community as a whole. She said that Vice-Mayor Davis will schedule this item on the Public Safety Committee agenda to look at the 287 (g) program and other items raised at this meeting.

UPDATE ON ANNEXATION LEGISLATION

City Attorney Oast said that this is a brief report on recent legislative developments on annexation.

As Council knows, the House Select Committee on Annexation has proposed a one-year moratorium on all city-initiated annexations and all petitioned satellite annexations. This moratorium, as drafted, would apply even to those annexations that are in some stage of judicial review. The table below identifies the areas with respect to which judicial review is pending, and indicates the legal status of each review process.

Some Council members have inquired about the financial impact on the City of delaying the effective date of these annexations. While he cannot provide a detailed analysis, he provided Council with copies of the Financial Plan from each Services Plan that includes the areas with respect to which judicial review is pending, with the particular areas highlighted. The Finance Department may be able to provide a more detailed analysis or respond to specific questions.

The House Select Committee was originally scheduled to meet on May 14, and he had planned to attend since he was going to be in Raleigh anyway. The meeting was rescheduled for May 19, and he tried to get information on that Committee meeting. He will monitor that. The League of Municipalities is following this issue closely, and the N.C. Chapter of the American Planning Association has also taken a position.

CITY OF ASHEVILLE ANNEXATIONS CURRENTLY UNDER JUDICIAL REVIEW

AREA	YEAR ADOPTED BY COUNCIL	STATUS
Huntington Chase	2002	City won at trial and Court of Appeals; petition for review pending in Supreme Court (decision possible in mid-June)
Ridgefield	2005	City won at trial; oral argument in Court of Appeals May 14, 2008; pending decision
Airport Road	2005	City won at trial; oral argument in Court of Appeals May 14, 2008; pending decision
Biltmore Lake	2007	pending trial in Buncombe County Superior Court

There are currently no annexations underway or areas that staff is reviewing for recommendation as to possible annexation. With respect to the areas listed above, considerable staff time and resources have been expended not only in evaluating the areas for annexation, but also in defending the legal challenges (including fees for outside counsel). Additionally, staff has invested some time and energy in preparing to begin serving the areas once they come into the City.

Mayor Bellamy said that she has spoken with Representative Goforth, co-chair of the House Select Committee on Annexation, and let him know that the legislation would be too punitive to the City of Asheville. She felt that it was unfair because Asheville has done all they were supposed to do and we have won on each level. Mayor Bellamy asked for, and received,

Council's consensus to advise our legislators that the Asheville annexations under judicial review should go forward.

City Attorney Oast said that he would draft a resolution opposing the annexation moratorium and place it on the next formal meeting agenda.

In addition, City Attorney Oast said that with regard to the Woodfin/Asheville annexation boundary, there is some concern that to the extent that this boundary adjustment may affect private properties that are occupied, they have asked us to see whether we can readjust the boundaries to take the private properties out and deal with them at a later time. He has been working with our Planning Department to see if we can reconfigure the boundaries to only deal with the state-owned properties. He said that the primary concern in doing this was to address the issue of wanting UNC-Asheville to be in Asheville. There was also the issue of the interchange at River Road and Broadway that right now there is a little confusion about who has jurisdiction. He felt he could draft legislation that takes care of those two main issues. There will be one piece of property that is owned potentially under consideration for development by UNC-Asheville but is not currently developed that would remain in Woodfin for the time-being. We may come forward with two options to deal with this - one of them creates some islands of unincorporated areas of Woodfin that are actually surrounded by Asheville. There is a deadline that is fast approaching and if Council is agreeable, he will move forward on that basis.

Mayor Bellamy said that we do want all of UNC-Asheville in Asheville.

City Attorney Oast responded to Councilwoman Cape when she asked if private property owners have a voice in this boundary agreement.

BOARD/COMMISSION APPOINTMENTS

Regarding the Civil Service Board, it was the recommendation of the Boards & Commissions to delay appointment of the Civil Service Board member until the legal outcome and to request the City Clerk contact the current Board member to see if she would remain on the Board until her replacement is appointed. City Council agreed.

Regarding the Recreation Board, there was only one applicant and it was the recommendation of the Boards & Commissions Committee to readvertise those vacancies. City Council agreed.

MISCELLANEOUS

Vice-Mayor Davis was honored to accept on behalf of the City of Asheville two paintings from Jonas Gerard. Mr. Gerard is a very renowned artist and was honored on 20/20. Mayor Bellamy said that we will proudly display those paintings on the 2nd Floor of City Hall.

Mayor Bellamy briefed Council on her recent meeting at the Executive Branch at the White House with other elected leaders to discuss homeland security. There is a big push to get our communities ready. She explained several things regarding emergency preparedness that individuals can do. While in Washington, she also met with Senator Dole's office and discussed the City's federal legislative agenda, focusing on issues that are important to our community.

Councilwoman Cape felt that the City's website would be a great place to have information regarding emergency preparedness, with information on what to do in the case of an emergency, showing where the emergency centers are located, etc.

Mayor Bellamy also suggested the community go to the City's website and sign up for reverse 911 in case of an emergency. She also was very supportive of our website containing a

financial crisis package and she has some information that she will give to staff to make that process easier.

Mayor Bellamy invited the community to the joint City-County Memorial Day celebration on Monday, May 26, 2008, at 1:00 p.m., in the City-County Plaza area.

Vice-Mayor Davis invited the community to the job fair on May 21, 2008, at Stephens-Lee Community Center, which is mainly geared for people who are challenged going back into the workforce.

Closed Session

At 7:25 p.m. Mayor Bellamy announced that City Council would continue their closed session.

At 7:36 p.m., Councilman Russell moved to come out of closed session. This motion was seconded by Councilwoman Jones and carried unanimously.

ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 7:36 p.m.

Magdalen Burleson
CITY CLERK

Jerry McBellamy
MAYOR

Tuesday – May 27, 2008 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Councilman William A. Russell Jr.

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Mayor Bellamy gave the invocation.

Mayor Bellamy commented on the wonderful City-County Memorial Day Celebration which recognized individuals who have given their lives and those who are protecting our lives. She asked everyone to keep in their hearts the people who serve our community and our country on a daily basis.

I. PROCLAMATIONS:

A. RECOGNITION OF CHRIS DOBBINS, FLEET MANAGER, AS RECIPIENT OF THE STATE CLEAN AIR RENEWABLE ENERGY COLLEAGUES AWARD

Mayor Bellamy was pleased to recognize Mr. Chris Dobbins, Fleet Manager, as the recipient of the State Clean Air Renewable Energy Colleagues Award. She said Chris Dobbins has been the City of Asheville's Fleet Manager since July 2000 and during his tenure, he has achieved numerous awards and accolades for the City for which he should be commended. While Fleet Manager, the City of Asheville's fleet received the 2nd Annual N.C. Mobile Care Award, which is the highest award recognition by the state to recognize outstanding individual and organizational efforts and leadership to reduce transportation related emissions. The Public Fleet Award recognizes that he has cut emissions through various efforts including the use of alternative fuels and advanced technology in our fleet vehicles. Mr. Dobbins secured the City's first electric vehicles in 2003, and after the opening of the Compressed Natural Gas (CNG) station in November of 2005, some of the City's fleet was converted to CNG technology in order to reduce carbon emissions. The City also received a $40,000 grant from the N.C. Dept. of Environment and Natural Resources for compressed natural gas heavy truck, which will replace a diesel truck. The City of Asheville also secured its first hybrid vehicles in 2006 and began the use of BioFuels (B5 Biodiesel & E10 Ethanol gasoline) in May 2007. Mr. Dobbins takes a very active role in the Land of Sky Clean Vehicles Coalition & Clean Air Campaign Steering Committee to promote the use of alternative fuels within the region. All of these efforts, along with Chris' excellent directional and managerial skills, help meet Asheville City Council's goals of an annual 2% reduction in greenhouse gas emission until 80% reduction is achieved.

B. PROCLAMATION PROCLAIMING THE WEEK OF JUNE 1-7, 2008, AS "NATIONAL CARDIOPULMONARY RESUSCITATION AND AUTOMATED EXTERNAL DEFIBRILLATOR AWARENESS WEEK"

Vice-Mayor Davis read the proclamation proclaiming the week of June 1-7, 2008, as "National Cardiopulmonary Resuscitation and Automated External Defibrillator Awareness Week" in the City of Asheville. He presented the proclamation to Ms. Mary Barnett, representing the

American Red Cross, and Fire Chief Greg Grayson, both of which briefed City Council on some activities taking place during the week and the importance of the automated external defibrillator to save lives.

Fire Chief Grayson also introduced Mr. Robin Linderman who survived a heart attack with the help of our automated external defibrillator and people performing Cardiopulmonary Resuscitation.

II. CONSENT AGENDA:

At the request of Councilwoman Cape, Consent Agenda Item "A" was removed from the Consent Agenda for discussion and/or individual vote.

At the request of Mayor Bellamy, Consent Agenda Item "C" was removed from the Consent Agenda for discussion and/or an individual vote.

At the request of Councilman Mumpower, Consent Agenda Item "E" was removed from the Consent Agenda for discussion and/or individual vote.

A. APPROVAL OF THE MINUTES OF THE FORMA MEETING HELD ON MAY 13, 2008, AND THE WORKSESSION HELD ON MAY 20, 2008

This item was removed from the Consent Agenda for discussion and/or an individual vote.

B. RESOLUTION NO. 08-104 - RESOLUTION OF INTENT TO CLOSE A PORTION OF EAST SCHENCK CRESCENT AND CALLING FOR A PUBLIC HEARING ON JUNE 24, 2008

Summary: The consideration of a resolution of intent to close a portion of the street known as East Schenck Crescent and setting a public hearing on June 24, 2008.

N. C. Gen. Stat. sec. 160-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, Biltmore Farms Inc. has requested the City of Asheville permanently close a portion of East Schenck Crescent. This closure will allow East Schenck Crescent to be re-aligned for better traffic flow at the intersection with Schenck Parkway

This closure is a part of the realignment of East Schenk Parkway providing interconnectivity of roadways and land use development complying with the Asheville City Development Plan, Land Use and Transportation.

Pros:

- The closure is a result of a realignment project at the location
- There will be no future compromise of ingress/egress to other property

Cons:

- Staff can find no potential challenges regarding the closure of a portion of East Schenck Crescent

There will be no fiscal impact related to this closure.

City staff recommends City Council adopt a resolution setting a public hearing for June 24, 2008, to close a portion of East Schenck Crescent.

RESOLUTION BOOK NO. 31 – PAGE 177

C. RESOLUTION AUTHORIZING THE CITY MANAGER TO MODIFY THE HOUSING TRUST FUND TERMS ORIGINALLY AGREED UPON BY MOUNTAIN HOUSING OPPORTUNITIES FOR THE PROJECT KNOWN AS CLINGMAN LOFTS

This item was removed from the Consent Agenda due to Mayor Bellamy's conflict of interest.

D. ORDINANCE NO. 3620 - ORDINANCE ENACTING OR CHANGING THE SPEED LIMIT ON HAWTHORNE DRIVE, EAST HAWTHORNE DRIVE AND WOLFE COVE ROAD TO 25 MILES PER HOUR

Summary: The consideration of an ordinance to enact or change the speed limit on Hawthorne Drive, East Hawthorne Drive, and Wolfe Cove Road.

Hawthorne Drive, East Hawthorne Drive and Wolfe Cove Road have been identified for speed concerns by residents, City Boards and Commissions, City Council, the Asheville Police Department, Transportation Services Division staff, and/or other City staff. The Transportation Services Division staff has conducted a field review along these streets to assess existing conditions including street geometry and conditions and/or speed studies. The Asheville Police Department supports the recommendation.

25 Miles Per Hour

Hawthorne Drive is a narrow residential street with street geometry problems, including horizontal and vertical curvature, several access points, and on-street parking. The daily traffic volumes are less than 100 vehicles per day and the 85th percentile speed is 24.0 mph. Currently, Hawthorne Drive does not have a posted speed limit which means that the statutory speed limit of 35 mph is in effect.

1. Hawthorne Drive, from Hampden Road to NC 81 (Swannanoa River Road).

East Hawthorne Drive is a narrow residential street with street geometry problems, including horizontal and vertical curvature, several access points, and on-street parking. The daily traffic volumes are less than 150 vehicles per day and the 85th percentile speed is 29.4 mph. Currently, East Hawthorne Drive does not have a posted speed limit which means that the statutory speed limit of 35 mph is in effect.

2. East Hawthorne Drive, from Fairway Drive to NC 81 (Swannanoa River Road).

Wolfe Cove Road is a narrow residential street with street geometry problems, including horizontal and vertical curvature, several access points, and on-street parking. The daily traffic volumes are less than 150 vehicles per day and the 85th percentile speed is 33.1 mph. Currently, Wolfe Cove Road has a posted speed limit of 30 mph. In order to mitigate potential traffic problems along Wolfe Cove Road as a result of a new development known as Bartram's Walk, the developer agreed to install traffic calming devices *(speed humps)* along Wolfe Cove Road.

3. Wolfe Cove Road, from SR 2053 (Beaverdam Road) to its dead-end, a distance of 0.61 miles from SR 2053 (Beaverdam Road).

Although not directly referenced in the Asheville City Development Plan 2025, it can reasonably be argued that establishing speed limits along city-maintained streets can positively affect the quality of life for its citizens. The following quote listed in *A Pattern Language*

(Christopher Alexander, et al; 1977) illustrates the importance of speed control: *"Nobody wants fast traffic going by their homes."* (Page 119, The Asheville City Development Plan 2025).

The total estimated installation cost to the City is about $1,000.

The Transportation & Engineering Department requests that City Council approve the ordinance amending speed limit changes along Hawthorne Drive, East Hawthorne Drive, and Wolfe Cove Road.

ORDINANCE BOOK NO. 24 – PAGE 459

E. BUDGET AMENDMENT TO REFLECT REIMBURSEMENT FROM THE U.S. DEPT. OF HOUSING & URBAN DEVELOPMENT FOR THE VETERANS MEMORIAL AT MEMORIAL STADIUM RESTORATION AND CONSTRUCTION

This item was removed from the Consent Agenda for discussion and/or an individual vote.

F. RESOLUTION NO. 08-107 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT WITH CINCINNATI SYSTEMS INC. FOR REPLACEMENT OF THE PARKING ACCESS AND REVENUE CONTROL SYSTEMS IN THE 3 MUNICIPALLY-OWNED PARKING GARAGES

Summary: The consideration of a resolution authorizing the City Manager to sign a contract with Cincinnati Systems Inc. for replacement of the Parking Access and Revenue Control Systems (PARCS) equipment in the three municipally owned parking garages.

Approximately 580,000 parking patrons utilized the Civic Center, Rankin Avenue, and Wall Street parking garages during 2007. Parking access and revenue control equipment controls the entry and exit gates, dispenses entry tickets, operates the FULL signs, accepts after hours payments, accepts payments at the exit booths, and provides operational and revenue management reports. The current equipment is approximately seven years old. And, it has been experiencing mechanical and or software failures at an increasing rate. The auto-cashier only accepts cash or coupons and can't charge variable rates after hours. The equipment has been planned for replacement for several years. This was delayed when the proposed Battery Park parking garage was not built.

On February 1, 2008, Parking Services requested proposals for the replacement of existing PARCS equipment and software. Included in the request were requirements for training of staff, service response time, and maintenance support. Two companies, Cincinnati Systems, Inc. distributor of Amano/McGann gate equipment and operating software, and Southern Time, distributor of Federal/APD gate equipment and operating software responded to the proposal. While more respondents would have been preferable, these two companies comprise 66% of the PARCS equipment installations in the Southeastern Region as defined by the International Parking Institute. Both distributors and both equipment manufacturers provide good equipment and service that meets the requirements of the City of Asheville as reported by the City's consultant Carl Walker, Inc. Both systems are expandable when the City adds additional parking facilities.

Cincinnati Systems, Inc's proposal had a total cost of $356,820.00. Southern Time's proposal had a total cost of $368,864.87. Both proposals are within the estimated range that was in the FY 2007/2008 budget.

Installation of equipment and operating systems should take no more than three months. Since Cincinnati Systems, Inc are our current supplier disruptions due to cutting and installing vehicle loops in the concrete should be minimal as they currently exist and should only require

minor modifications if any. Cincinnati Systems, Inc will remove existing equipment as they factored in a trade-in allowance.

This project complies with the Strategic Operating Plan's priority areas of Economic Development and Community Building by upgrading the capabilities of the revenue generation of the parking garages and improving customer service.

Pros:

- Project improves customer service by providing a greater variety of payment options e.g. credit/debit cards and smart cards, for parking patrons.
- Project will provide the City with the opportunity to charge variable rates for after hours and reserved parking plans.
- Equipment and operating software is an upgrade of the current Amano brand equipment and McGann software utilized in the garages. This project will minimize the impact of parking patrons by not having to be reissued cards.
- The equipment and software selected is the same as what Buncombe County has selected for their new deck(s) providing greater opportunities for interconnectivity or sharing of parts in emergencies.
- The vendor, equipment, and software is the same as the systems used for access control at City Hall, the City employee parking lots, and the Public Works building.

Cons:

- Minor disruptions, not to exceed four hours, to parking patrons when the new equipment is installed in the exit lanes.

There is no adverse fiscal impact due to this project. Funds for the replacement of the PARCS equipment were authorized in the Fiscal Year 2007/2008 Operating Budget for Parking Services and are still available.

City staff recommends City Council adopt a resolution authorizing the City Manager to sign a contract with Cincinnati Systems, Inc. for replacement of the Parking Access and Revenue Control Systems (PARCS) equipment in the three municipally owned parking garages.

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G. RESOLUTION NO. 08-108 - RESOLUTION APPOINTING CESAR ROMERO TO THE CITIZENS-POLICE ADVISORY COMMITTEE

Summary: Mr. Craig Young, west representative, has resigned as a member of the Citizens-Police Advisory Committee, thus leaving an unexpired term until June 30, 2008.

At the May 13, 2008, City Council meeting, a motion was made to appoint Mr. Cesar W. Romero, 43 Evelake Drive, Asheville, North Carolina, as the west representative on the Citizens-Police Advisory Committee, to serve the unexpired term of Mr. Young, term to expire June 30, 2008, and then a full three-year term, term to expire June 30, 2011, or until his successor has been appointed.

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H. RESOLUTION NO. 08-109 - RESOLUTION SETTING A PUBLIC HEARING ON THE CITY'S INTENT TO WITHDRAW FROM A GRANT AGREEMENT WITH THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES LAND AND WATER CONSERVATION FUND FOR CONSTRUCTION AT AZALEA PARK

Summary: The consideration of a resolution setting a public hearing on June 10, 2008, of the City of Asheville's intent to withdraw from a grant agreement with North Carolina Department of Environment and Natural Resources (DENR) Land and Water Conservation Fund for construction at Azalea Park.

The City of Asheville informed DENR of its intent to withdraw from the DENR Land and Water Conservation Fund contract for Azalea Park LWCF #37-010201/DENR #PO7082 for $91,423. A public hearing is required to satisfy the requirements for withdrawal from the agreement. To date, no LWCF reimbursement payments have been requested or received by the City of Asheville for this project. Upon completion of the public hearing, authorization to withdraw from the agreement will be requested of Council.

Original cost estimate for the LWCF project were $182,846 for a trail and wildlife interpretive area at the lake, a river overlook and a picnic shelter. Since the acceptance of the grant, no other funds have been budgeted to support the project. Additionally, the City of Asheville's capital priorities in the Parks, Recreation and Cultural Arts Department have changed and this project and the additional capital budget to support it is not a priority at this time nor will it be for a few more years.

The City is also in the process of developing a new Parks, Recreation and Cultural Arts Department master plan which will set the pace for capital projects for the next few years. The recommendations from the master plan will determine how the build out of Azalea Park fits into the overall vision.

The Azalea Park Land and Water Conservation Fund construction ties in with the Strategic Operating Plan by addressing the Growth, Development & Land Use Priority area; supporting multi-modal programs and the Natural and Built Environment Priority; develop programs to protect key environmental features.

This action complies with the Azalea Park Master Plan by recognizing cost constraints related to the project.

Pro:

- Holding a public hearing satisfies DENR's requirement prior to the withdrawal from the agreement.

Con:

- None.

There is no fiscal impact.

City staff recommends City Council set a public hearing on June 10, 2008, in order to satisfy North Carolina Department of Environment and Natural Resources' requirement to complete the City of Asheville's withdrawal from the LWCF agreement.

RESOLUTION BOOK NO. 31 – PAGE 182

I. RESOLUTION NO. 08-110 - RESOLUTION MODIFYING THE 2008 CITY COUNCIL MEETING SCHEDULE

Summary: The formal meeting of the City Council scheduled for Tuesday, July 8, 2008, is hereby cancelled.

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Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Vice-Mayor Davis moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Jones and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

A. APPROVAL OF THE MINUTES OF THE FORMA MEETING HELD ON MAY 13, 2008, AND THE WORKSESSION HELD ON MAY 20, 2008

Councilwoman Cape asked for the opportunity to make revisions to the May 13, 2008, meeting.

Mayor Bellamy said that the minutes would be amended and voted on at the June 10, 2008, meeting.

Councilwoman Cape moved to approve the May 20, 2008, minutes. This motion was seconded by Councilman Mumpower and carried unanimously.

C. RESOLUTION NO. 08-106 - RESOLUTION AUTHORIZING THE CITY MANAGER TO MODIFY THE HOUSING TRUST FUND TERMS ORIGINALLY AGREED UPON BY MOUNTAIN HOUSING OPPORTUNITIES FOR THE PROJECT KNOWN AS CLINGMAN LOFTS

At the request of Mayor Bellamy, Vice-Mayor Davis moved to recuse Mayor Bellamy from participating in this matter due to a conflict of interest. This motion was seconded by Councilwoman Jones and carried unanimously.

At this time, Mayor Bellamy turned over the gavel to Vice-Mayor Davis to conduct the meeting.

Summary: The consideration of a resolution authorizing the City Manager to modify the Housing Trust Fund (HTF) terms originally agreed upon by Mountain Housing Opportunities (MHO) for the project known as Clingman Lofts.

In July 2007, Council approved a $250,000 HTF loan to MHO for the development of nine (9) affordable one-bedroom units in its Clingman Lofts project on Clingman Avenue. MHO has now requested a reduction in the number of units from nine to eight. The eight units are located on the first and second floors and are priced at $120,000. The ninth unit is on the third floor where a vaulted ceiling and better views create additional value of approximately $15,000. MHO feels that the affordable sales price of $120,000 is substantially below market value and that they would in effect be gifting $15,000 in instant equity if the unit is sold at this price.

If approved, the HTF loan amount per unit would increase from $27,777 to $31,250.00. This is below the maximum of $50,000 per unit. Due to HOME funds invested in the project, the total number of units sold to low income borrowers will remain the same. The request was recommended for approval by the Housing and Community Development Committee on April 21st, 2008.

This action complies with the Strategic Operating Plan in that the project is supportive of the City's goal of providing safe and decent affordable housing units to the citizens of Asheville.

The project addresses the Consolidated Housing & Community Development Plan in that it addresses the Plan's priorities of increasing the housing stock, promoting homeownership,

building quality, energy-efficient housing, and coordinating development with transportation and jobs.

Pros:

- Allows the developer to recognize true market value for the ninth unit.
- Prevents the homebuyer from realizing substantial instant equity subsidized by the HTF.
- HOME funds are also invested in the project and will guarantee a total of eleven units sold to buyers below 80% area median income, with affordability assured for 10 years.
- MHO has a long track record in developing affordable housing in compliance with funding agreements.

Cons:

- Decreases the number of the most affordable units in the development from nine to eight.
- Creates an unfavorable precedent for renegotiating terms that were part of the loan approval process.

There is no fiscal impact. Funds for the project have been previously appropriated.

Staff recommends adoption of a resolution authorizing the City Manager to modify the terms of the Housing Trust Fund loan for Clingman Lofts from nine (9) affordable units to eight (8) affordable units.

Councilwoman Jones moved for the adoption of Resolution No. 08-106. This motion was seconded by Councilman Newman and carried on a 4-1 vote, with Councilman Mumpower voting "no" (Mayor Bellamy excused).

At this time, Vice-Mayor Davis returned the gavel to Mayor Bellamy to conduct the meeting.

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E. ORDINANCE NO. 3621 - BUDGET AMENDMENT TO REFLECT REIMBURSEMENT FROM THE U.S. DEPT. OF HOUSING & URBAN DEVELOPMENT FOR THE VETERANS MEMORIAL AT MEMORIAL STADIUM RESTORATION AND CONSTRUCTION

Summary: The consideration of a budget amendment, in the amount of $247,500, to amend the budget of Veteran's Memorial restoration and construction, reflecting a reimbursement grant from the U.S. Department of Housing and Urban Development – Economic Development Initiative for restoration and construction costs up to $247,500.

The U.S. Department of Housing and Urban Development – Economic Development Initiative awarded the City of Asheville a grant of up to $247,500 for the Veteran's Memorial restoration and construction. The funds will be used to renovate the Veteran's Memorial.

The plan includes restoring the original memorial, creating a new memorial, and landscaping.

The City of Asheville has received an executed grant agreement and the Authority to Use Grant Funds from the U.S. Department of Housing and Urban Development.

This action complies with the Strategic Operating Plan by addressing the Critical Services and Infrastructure Priority area with the goal of providing safe, well-maintained, and affordable programs and facilities.

This action complies with the site master plan for Memorial Stadium and Mountainside Park by leveraging the City's existing capital funds allocated for renovation and construction of the Veteran's Memorial.

Pros:

- Leverages the City's existing capital funds allocated for the renovation and construction of the Veteran's Memorial
- Advances the project's progress toward completion
- Provides a meaningful recognition for the region's veteran's

Con:

- The new Memorial will require some additional ongoing maintenance, thus requiring additional operational funding once on-line.

The budget amendment will increase the CIP budget by $247,500.

City staff recommends City Council adopt the budget amendment, in the amount of $247,500, to amend the budget to reflect the receipt of an executed grant agreement for reimbursement of up to $247,500 from the U.S. Department of Housing and Urban Development – Economic Development Initiative for restoration and construction costs at Veteran's Memorial at Memorial Stadium.

Councilman Mumpower, Chair of the Memorial Stadium Restoration Committee, would have to speak against the motion accepting this money as we are accepting money from the federal government which has roughly a $10 Trillion deficit. He is personally behind restoring Memorial Stadium, but as a member of Council, he would have to speak against the motion.

Mayor Bellamy explained how these these funds were applied for many years ago and delayed for passage at the federal level. The money was part of the federal legislative agenda.

Councilman Mumpower said that even though this was money Congressman Taylor raised for the City, it's still taxpayer dollars.

In response to Vice-Mayor Davis about the project moving forward, Councilman Mumpower said that right before Hurricane Katrina we had some problem with monies not coming forward in the athletic component of the facility - which had nothing to do with Memorial Stadium. Staff is making an effort to create a new plan and we're trying to press forward. He said the money will be well spent, but he has a physiological difference of where we are getting it from.

Mayor Bellamy said this is not for bricks and mortar for Memorial Stadium, but it's for the memorial at the stadium. This will go towards the Plan Al Kopf has put together.

Councilman Mumpower responded to Councilman Newman when he asked about private dollars for the project.

Councilman Newman said that Council has supported the veterans' memorial at City-Council Plaza which had significant fundraising efforts behind it. However, since Councilman Mumpower is Chairing this effort for a veterans' memorial at Memorial Stadium and is voting against the motion, he would vote against it as well.

Vice-Mayor Davis moved for the adoption of Ordinance No. 3621. This motion was seconded by Councilwoman Cape and carried on a 4-2 vote, with Councilman Mumpower and Councilman Newman voting "no."

After discussion initiated by Councilwoman Jones, it was the consensus of Council, at Mayor Bellamy's concurrence, that after the budget process staff is to update Council on the Memorial Stadium Restoration Plan (including the amount raised and what is in hand), along with minutes from where the Plan and the veterans memorial at Memorial Stadium was discussed.

ORDINANCE BOOK NO. 24 – PAGE 460

III. PRESENTATIONS & REPORTS:

IV. PUBLIC HEARINGS:

A. RESOLUTION NO. 08-111 - RESOLUTION REGARDING PROPOSED INCORPORATION OF THE TOWN OF SWANNANOA

RESOLUTION NO. 08-112 - RESOLUTION SUPPORTING THE WESTERN BOUNDARY OF THE TOWN OF SWANNANOA FOLLOW THE 28805 ZIP CODE (IF THE TOWN OF SWANNANOA IS CREATED)

Interim Planning & Development Director Shannon Tuch said that on May 8, 2008, the Asheville City Council considered a resolutions proposed by the Task Force for Incorporation for the Town of Swannanoa and a separate resolution offered by staff. During this meeting City Council received public comment and deliberated on the proposed resolutions but ultimately decided to table the matter for two weeks at which time it was hoped that: (1) The language of the resolution would be strengthened to better reflect general concerns and desire for a referendum, and (2) That the western boundary be further explored to better protect Asheville's interests for a discussion regarding regional partnerships for planning and growth management issues.

Staff met with representatives on Monday, May 19, where the language in the resolution was modified to the satisfaction of the group and is being presented to Council for their consideration.

Also discussed were the concerns regarding the location of the western boundary with the Task Force representatives reiterating their desire to not exclude critical cultural sites (historic cemetery) and interested landholders. At this point in time, no changes to this western boundary are being offered. In considering this position, staff again recognizes that there is little impact on Asheville's existing fiscal state as a result of one boundary versus another; however, it is also recognized that a more conservative boundary (as proposed by staff) leaves more opportunity for future agreements.

Councilman Newman asked if Council adopted the proposed resolution and added the following two caveats, would the Joint Legislative Commission on Municipal Incorporation view that as a negative recommendation: (1) the zip code boundary be the western boundary; and (2) very large rural tracks of land upon which there are no proposed developments be excluded from the proposed incorporation area.

City Attorney Oast said that Council can't redraw the boundaries of what is being proposed for incorporation. It was his opinion that Council had to vote on what the Task Force has presented to Council. He felt that Council could either approve the resolution or not approve it. The resolution before Council does express Council's concerns as follows (a) That the size of the area proposed for incorporation will present practical difficulties in delivering urban services; (b) That the density and character of the area proposed for incorporation is predominantly rural and does not reflect the intent of incorporation; and (c) Incorporation affects the City of Asheville's opportunities for improved fiscal health. He said that Council could, in a separate communication, let the Joint Legislative Committee know that Council could support the incorporation, without as many reservations, an incorporation that followed the zip code boundaries on the western edge.

Councilman Newman clarified that Council could adopt a separate resolution or a letter to the Joint Legislative Committee on Municipal Corporations expressing this Council's preference that the western boundary being the zip code boundary and not what was presented by the Swannanoa Incorporation Task Force.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Newman moved to adopt Resolution No. 08-111 and that (b) be amended to read: "(b) That the density and character of the area proposed for incorporation is predominantly rural and does not reflect the intent of incorporation and that we encourage the Swannanoa Incorporation Task Force to consider excluding large rural properties on which there is not development planed at this time." This motion was seconded by Councilman Mumpower.

There was a brief discussion about public comment since public comment was taken on May 13, 2008. City Attorney Oast noted that this is an issue that a public hearing is not required.

Mayor Bellamy opened the public hearing at 5:47 p.m. and asked that comments be limited to only the new language proposed by Councilman Newman and seconded by Councilman Mumpower.

The following individuals spoke against the Asheville's resolution supporting the Town of Swannanoa's incorporation for several reasons, some being, but are not limited to: the acreage of the incorporation is too large; there will be an increase in property taxes; there will be more rules and less freedom; 52% of the land is open land; if the Council has questions, they should vote no for the incorporation; there is nothing in the General Statutes that will require a referendum; owners of 200 acres close to the Bee Tree Watershed want to be excluded from the incorporation; proposal is unreasonable and over-reaching; the proposed budget is not realistic; increase in taxes may make it impossible for owners to keep their land; large property owners will have to pay taxes on services they don't need; suggest smaller incorporation area near Highway 70; even small property owners who live far from Highway 70 should have the opportunity to be excluded from incorporation; some signers of the incorporation petition signed due to the threat of annexation by Asheville; there are many people who signed the incorporation petition who are asking that their names be removed; and consequences of incorporation on farm and forestry programs can be catastrophic:

Ms. Bonnie Vess
Mr. Eric Gorney, Swannanoa resident representing Swannanoa Truth
Mr. W. Louis Bissette, Jr., attorney representing Nancy Dugan and Colin Roberson
Mr. Gene Loomis, owner of Gene Loomis Harley Davidson
Mr. Arnold Ferguson, large land owner
Mr. Doug Thigpen, resident and owner of six acres in Swannanoa,
Ms. Hoffman, Swannanoa resident
Mr. Brett Vess
Ms. Nancy Dugan

The following individuals spoke in support of the Asheville's resolution supporting the Town of Swannanoa's incorporation for several reasons, some being, but are not limited to: residents will be given a voice; the owners of the large tracks will still have to travel through Swannanoa to get to anywhere; it would show favoritism to allow property owners who own 5, 4 or 3 acres to opt out; over 50% of the proposed incorporation area is developed and by law it only needs to be 40%; the issue of farm land and forestry would be an issue that would come up during zoning; and there was no representation from Swannanoa on the US 70 Corridor Study:

Mr. Robert Kelly, owner of 237 acres

Mr. Steve Hansel
Mr. Ryan Hildebrand
Mr. Jerry Pope, owner of 1/2 acre of land in Swannanoa

Mr. Geoffrey Bullock and Ms. Carol Groben, representing the Swannanoa Incorporation Task Force, reviewed the following letter with Council: "We would like to use this opportunity to offer some clarification and elaboration around a few issues that have appeared to cuase confusion or perhaps, been misinterpreted. The issues that we have identified being relevant to that purpose include: (1) How e came to determine our boundaries; (2) the considerations resulting in our revised western boundary; (3) the desire on the part of this council for a long-term annexation agreement; and (4) the call for a referendum.

"As we have identifed in our earlier written correspondence to this council, the boundaries committee consisted of 10 permanent members and that many again contributing members. The committee worked for many months and explored numerous options. Our eventual boundaries were vetted by the community at large in community meetings and then endorsed by the Executive Board. There were several factors that contributed to the determination of our original boundaries. While we did start with the fire district (encouraged by our fire chief and the Institute of Government) there were several scenarios considered that deviated significantly from the fire district. As we have noted, the historical considerations, the unique topography and the resulting infrastructure, communal interests, and the self identity of residents were all concerns. When due consideration was given to all these other relevant factors, the general outline of the fire district continued to present itself as a natural and logical framework. There are some areas of the fire district that have been excluded. For instance, there is a small residential area in the upper Northwest corner that was excluded, because esrvice delivery is impractical. The federal lands to the north were excluded for obvious reasons. There were also two large tracts excluded, about which there seems to be some misunderstanding. These would be the areas of the Cove and Warren Wilson College. These areas were excluded primarily because the fire district boundary split these very large tracts that are owned and utilized by nonprofit institutions. It was determined impractical and undesirable to have properties of this sort split by a town boundary and therefore, it was decided to remove them in total. We would point out that this did not involve a negotiation or an "opt out" arrangement. We did have one meeting with Warren Wilson to assess if they had a strong preference for being included and ofund their response to be ambivalent. In order for us to proceed with our process – and because we had some concern regarding the student body being a significant number of "transient" voters – we decided to exclude the campus.

"Moving on to the western boundary; as you know we have met twice with your planning department and have made an effort to incorporate their input and concerns into our proposal We did make a modest modification from our original boundary in the area tha appeared to us to have the greatest potential to impact the growth of Asheville – specifically the irregular point that overlapped with Asheville's easternmost point. As Mrs. Tuch indicated in her presentation to you on May 13, the planning department had suggested we look at the zip code line as a possible boundary. We did give this thorough consideration within the context of our overall goals for the town of Swannanoa and original criteria for determining boundaries. We did not have a fundamental objection with foregoing this relatively small amount of land; however we also have heard from several people in Swannanoa that they do not consider this "just land". Specifically as has been noted previously, the Smauel Davidson monument is located in this area, along with a community Cemetery. There are many descendents of the Davidson family in Swannanoa and he is an important historical figure to many; perhaps comparable to the importance of Thomas Wolfe to many in Asheville. Additionaily, we heard from residents living in that area about their desire to be inclued in the town. We also noted that these properties are being served by the Swannanoa fire department and currently paying taxes for that service. And although postal delivery to that area comes from an Asheville office, we do not perceive that there are any intrinsic benefits to delivery of services coming from the west or any impediments to them being delivered effectively by Swannanoa, since all access to these properties is from Highway 70.

These considerations which support the inclusion of this area into Swannanoa, combined with feedback from the planning department that this area does not significantly impact the potential interests of Asheville, have led us to deem that this is an appropriate and reasonable western boundary.

"When establishing our boundaries we have attempted to be inclusive of those areas and residents that appeared to fit within a town of Swannanoa. We have also done that with the hope and anticipation that any need or consideration of annexation can be avoided for a long time to come. This leads to the wish on the part of this council for a formalized annexation agreement. As we hve stated previously, we recognize and support the need for regional planning and your need to take this into consideration. However, we have also experienced ourselves sometimes feeling as if we are in a "Catch-22" regarding this issue. As we have shared with the council, since we are not an elected body we believe it is inappropriate for us to establish policy beyond the bare minimum necessasry to make our application with the state. Therefore, it has not been possible to create a formal agreement bwtween Asheville and Swannanoa regarding annexation, since "Swannanoa" does not yet exist. We have tried to provide all assurances that are within our ability, including offering an agreement that while the members of the current Executive Board serve as an interim town council they will not undertake any action toward involuntary annexations and also to provide an earnest recommendation that the first elected town council meet with Asheville as soon as possible to address this issue. We also have felt ourselves in a Catch-2 on this issue, because --- while we appreciate Asheville's need for caution in this area – we genuinely cannot imagine any scenario in which a new town of Swannanoa would consider any involuntary annexation for many years to come.

"We hope that the council will keep in mind that with our proposal we are talking about a newly formed town in its infancy. Our proposed formal services are certainly modest incomparison to a middle size and long established city such as Asheville. We do recognize it is a tremendous undertaking to become a municipal entity; but we also recognize the current needs and benefits to the citizens of Swannanoa are significantly different from the needs and benefits the citizens of Asheville expect to receive from their city government. Increased police prescence, street lighting, and road maintenance are all services that we believe will be improved to the benefit of our residents when they are subject to greater local control. But, we also look forward to having access to informal services and funding that are granted only to established municipalities, especially related to revitalization and community enhancement. We also look forward to being a bona fide participant in the various forums addressing our area's regional planning and growth management.

"Lastly, we would speak briefly to the concems about a referendum. We would note that the task force did not formally address this issue until February of this year. We have recognized that the decision ona referendum resides solely with the general assembly and therefore we had simply not addressed the issue. However, as you know there are members of our community who do not favor incorporation. This is to be expected with any issue of this magnitude, and we certainly respect the opinions of those who oppose incorporation – even if we have not always considered the actions or statements of some to be appropriate. Nonetheless, we are talking about forming a town, which includes addressing differences of opinion by utilizing representative elected government. Consistent with that thinking, it makes perfect sense to us that the establishment of the town should also be based on an election process confirming that the majority of residents are in favor of this very significant undertaking. Obviously, we believe the majority of residents do favor incorporation or we would not have invested so much of our time and energy over the past 18 months. However, if we are mistaken and a majoriy of residents do not favor incorporation, we recognize that do be a strong indication that a Town of Swannanoa as currently proposed would be untenable. Therefore, we fully support holding a referendum and we will include this request in our application to the state.

"We thank you for your consideralton of our timeframe and for making room tonight in your busy agenda to consider this resolution again, so that we may proceed with our efforts.

Obviously, we hope you will find yourselves in favor of this resolution and that Asheville and Swannanoa will be cooperative neighbors into the future."

Mayor Bellamy closed the public hearing at 6:14 p.m.

Councilman Newman clarified his motion in that he just didn't mean that there should be large tracks of land removed from the incorporation. He felt that the large rural areas (which could include large tracks and smaller tracks) should also be excluded from this incorporation. If there is a small tract of land five miles from the town, it shouldn't be incorporated. He didn't want to discriminate against small property owners, but wanted to make the point that incorporating these wilderness tracks of land up on the mountain sides into a proposed town is not the right thing to do. He clarified that his motion was for large rural areas, rather than large properties. As the member of Council who seconded the motion, Councilman Mumpower supported the clarification.

Councilwoman Cape said that even though she would like to be a good neighbor to Swannanoa, she could not support the size of the proposed incorporation, the inclusion of the rural areas or the tracks of land which are distant from the center of the town. She understood City Attorney Oast say that Asheville either has to say yes or no to the size and boundaries presented to us. Even though she is not going to support the motion, she would like Swannanoa to come back with boundaries for a smaller town that Asheville can give their 100% support.

Councilman Mumpower felt that Asheville has the reputation for laying a heavy hand on our neighbors and we are trying hard not to do that. He felt the resolution raises concerns that we have, provides for a referendum and keeps us out of the business of telling Swannanoa residents what they should or should not be going. He felt that was a good healthy process.

Vice-Mayor Davis felt the resolution is contradictory - on one hand we say we approve the incorporation and on the other hand we express concerns about the size of non-municipal like land. This is a huge boundary that has little semblance of a town. He felt there should be a Town of Swannanoa, but not this size.

Mayor Bellamy said that this will have in impact on the City of Asheville. Every two years Council adopts a Resolution of Consideration regarding annexation and east Asheville was not an area that was looked at, mostly because it was not developed. The criteria for annexation is different than the criteria for incorporation. It will, however, impact our sales tax. She felt it's important to convey to our neighbors in Swannanoa that this is good will. This is our way of reaching out to say we support you but we do have some concerns and one main concern is the size of the proposed incorporation. She will support this resolution as she supported the proposed incorporation of Leicester because of good will. She felt that Swannanoa Incorporation Task Force should listen to all their neighbors and take their concerns under consideration. She noted that the tax rate will adversely impact some of the residents because the tax rate will be added onto the existing county's tax rates. She also asked for re-consideration of the boundary.

The clarified motion made by Councilman Newman and seconded by Councilman Mumpower carried on a 4-2 vote, with Vice-Mayor Davis and Councilwoman Cape voting "no."

Councilman Newman moved to support, if there is a new township of Swannanoa created, the western boundary to follow the 28805 zip code. This motion was seconded by Councilwoman Jones.

Councilman Mumpower would speak against the motion in that Asheville's effort to try to stay out of micro-managing Swannanoa residents' affairs and raise our concerns has been done through the first resolution adopted.

Councilwoman Cape asked for a friendly amendment to the motion in that the northern boundaries of the proposed Town of Swannanoa be looked at also to exclude rural areas. Councilman Newman supported the amendment; however, Councilwoman Jones (who seconded the motion) did not. Councilman Newman then withdrew his support for the friendly amendment.

The motion made by Councilman Newman and seconded by Councilwoman Jones carried on a 4-2 vote, with Councilwoman Cape and Councilman Mumpower voting "no."

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B. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR AN AT&T MOBILITY TELECOMMUNICATION TOWER LOCATED AT 555 BREVARD ROAD

ORDINANCE NO. 3622 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR AN AT&T MOBILITY TELECOMMUNICATION TOWER LOCATED AT 555 BREVARD ROAD

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

City Attorney Oast also said that the Authorized Practice Committee of the North Carolina State Bar has issued an advisory opinion that appearing in a representative capacity for a party before a local governmental body in a quasi-judicial proceeding is the practice of law, especially with respect to such aspects of the hearing as examining or cross-examining witnesses, or advocating for legal conclusions or results. This does not prevent persons, including land use professionals, from presenting information or expressing opinions within their knowledge or area of expertise.

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 6:34 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Jessica Bernstein submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Bernstein said that this is the consideration of the issuance of a conditional use permit for an AT&T mobility telecommunication tower located at 555 Brevard Road (Attachment to City Exhibit 3 - Location Map). This request is for a review of a proposed telecommunications tower at 555 Brevard (Oakview) Road, which is considered as a Conditional Use pursuant to Section 7-8-20(e) of the Unified Development Ordinance (UDO).

The project site consists of a single parcel, 17.84 acres in size. The property is zoned Commercial Industrial (CI) and is surrounded by RS-4 to the west and Highway Business (HB) and CI to the south and east (Attachment to City Exhibit 3 - Aerial Map). Interstate 40 provides the northern boundary. The parcel is owned by Progress Energy and contains a number of structures. The applicant will be leasing a small area of the parent parcel for the tower.

The proposed monopole tower will be 100 feet in height (maximum allowed by the UDO) and will be constructed adjacent to an existing office building and vehicular use area. The associated equipment will be 10 feet in height (Attachment to City Exhibit 3 - Site Survey). The pole and equipment ("proposed tower compound area") will be enclosed by a chain link fence topped by barbed wire, per the ordinance. As required by the UDO, the tower is designed to accommodate at least one other user for co-location.

The applicant is requesting a modification to the required landscaping (Attachment to City Exhibit 3 - Site Landscape Plan). The code requires that the tower shall be buffered from adjacent properties by a 20 foot Type A buffer, which the applicant intends to install around three of the four sides of the tower compound area (east, south and west). Directly to the north of the tower site is a parking lot from which the tower is accessed. The modification request is to eliminate the buffer on that northern side. Additionally, the applicant will be requesting tree credits from existing vegetation to count towards a portion of the required bufferyard plantings.

As part of the special requirements applied to Conditional Uses in the CI zoning district per Sec. 7-16-2(d)(3), the project must meet a number of conditions for telecommunication towers including those technical conditions addressed in the April 21, 2008, Technical Review Committee (TRC) staff report (which will be met). In addition to the technical conditions, the following non-technical standards must also be met:

f. Applicants shall first be encouraged to consider properties owned by the City or Buncombe County before considering private properties.
The applicant has indicated that they considered properties located by the City of Asheville, Buncombe County and their instrumentalities, before Progress Energy made its property available to AT&T, and "found no such public properties adequate to accommodate the proposed monopole facility."

i. No telecommunication facility shall interfere with usual and customary radio and television reception.
The applicant possesses a current FCC license and no interference with other radio or television transmissions is expected.

t.7. Generators may not be used as a primary electrical power source.
Generators will not be used as a primary electrical power source.

t.13. The City Council may require any other conditions deemed necessary or desirable to ameliorate the impact of the tower on the adjacent properties and uses.
Additional conditions to be proposed as deemed necessary by Council.

u. An annual wireless telecommunication facility permit shall be required for each wireless telecommunication facility located in the city.
In order to annually renew this permit the applicant must certify the information described in Sec. 7-16-2(d)(3)(u)1-6.

v. Conditional use permits for telecommunication towers shall be valid for an initial period of five years.
In order to review the permit for an additional five year period, the applicant must submit a renewal request within 60 days prior to the expiration of the initial permit period. A review shall be conducted to determine whether and under what

conditions the conditional use may be extended for successive five year periods. Additional details of this renewal process are described in Sec. 7-16-2(d)(3)(v).

w. A conditional use approval for a telecommunication tower shall become null and void if the facility is not constructed and placed in service within one year of the date of approval.
Approval will become null and void after a period of one year, however, the conditional use approval may be extended for a period of 6 months if substantial construction has commenced before the end of the initial year. If construction has not begun before the end of the initial year, re-application for a new conditional use permit would be required.

This project was approved with conditions by the TRC on April 21, 2008. Per Section 7-5-5(d)(3)a. of the UDO, this type of Conditional Use request is not required to undergo review by the Planning & Zoning Commission and is instead forwarded to the City Council directly. No communication has been received regarding this proposal.

City Council must take formal action as set forth in section 7-5-5(e)(3) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case pursuant to section 7-16-2(c) of the UDO. Staff's review indicates that all seven standards are met as proposed in the site plan.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
The project will meet State building code requirements and will be reviewed in detail by the TRC to ensure compliance with safety requirements.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
The project incorporates retaining existing vegetation adjacent to the tower site and proposes a monopole construction that should be as minimally obstructive as possible. There are no significant natural or topographic features on the site that pose a conflict with the project. In addition, the installation is extremely limited in its footprint and will require an extremely small amount of site disturbance with little to no grading or ground disturbing activity.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
The site is currently used for utility distribution by Progress Energy and this use is compatible (as a telecommunication utility). Many of the surrounding parcels are vacant. Although there is a residentially-zoned neighborhood adjacent to the east, the tower is a distance of approximately 731' feet away. There are a small number of residentially-used properties nearby to the west, although zoned HB, and the tower is a distance of approximately 204' away (the ordinance requires a distance of 50'). The tower should not substantially injure the values of adjacent or abutting property.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
The area surrounding this proposal is zoned Commercial Industrial (CI) and Highway Business (HB) and is located just off the highway interchanges of I-240, I-40 and I-26. The proposed use is appropriate in this zoning district and compatible with the other utility services being offered on this site by Progress Energy. There are residences on nearby

parcels (zoned HB to the east and RS-4 to the east) however the proposed development well exceeds distance requirements as set forth in the ordinance.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
*The **Asheville City Development Plan 2025** thoroughly describes the need to accommodate and encourage new technology as a critical factor in sustainable economic development; it also states that the City should pursue compatible infill development, while ensuring that sufficient infrastructure capacity exists or will be provided to accommodate this development. This proposal places a telecommunication tower (which is increasingly considered as a necessary utility rather than a convenience) on an existing utility site in a zoning district where this type of use is allowed.*

Telecommunication towers can be considered similar to utilities. This proposal supports Council's priority area of "Critical Services & Infrastructure" and indrectly supports goals for "Economic Development."

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
The proposed development is located near transportation facilities (I-26 and I-40) and other utilities appear adequate. The Technical Review Committee did not reveal any issues for water supply, fire and police protection, waste disposal, etc.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
The proposed tower installation is not expected to cause any increase in traffic to the site other than periodic maintenance visits.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:
- Tower designed for co-location, which eliminates the need for additional towers in the future.
- Should result in improved cellular service for Asheville's AT&T Mobility customers.
- Proposal can be considered as a utility and is to be placed on an existing utility-based parcel.
- The installation is extremely limited in its footprint and will require an extremely small amount of site disturbance with little to no grading or ground disturbing activity.

Con:
- None noted.

Staff recommends approval of the Conditional Use Permit with the requested landscaping modification, inclusive of the conditions listed below and as outlined in the TRC staff report.

Mr. Jonathan Yates, representing the developer, spoke in support of the conditional use permit noting that they looked for several years and believe they found the best site.

In response to Mayor Bellamy, Interim Planning & Development Director Shannon Tuch said that staff did not consider a balloon test in this situation. Balloon tests are used more commonly for tall buildings to try to determine the visual impact. It wasn't done at this site because the taller the pole gets, the thinner it gets and it starts to fade into the sky.

After rebuttal, Mayor Bellamy closed the public hearing at 6:41 p.m.

Councilwoman Jones moved for the adoption of Ordinance No. 3622, adopting the proposed master plan for the conditional use permit for an AT&T mobility telecommunication tower located on 555 Brevard Road, with landscape modification subject to the conditions recommended by City staff and subject to the following standard conditions: (1) The project shall comply with all conditions outlined in the TRC staff report dated April 21, 2008; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with cut-off fixtures and directed away from adjoining properties and streets; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; and (4) The building design, construction materials and orientation on site must comply with the conceptual. This motion was seconded by Councilman Mumpower and carried unanimously.

ORDINANCE BOOK NO. 24 – PAGE 462

C. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE CONDITIONAL ZONING ORDINANCE FOR PROPERTY LOCATED AT 1741 HENDERSONVILLE ROAD REGARDING SIGNAGE FOR THE WEIRBRIDGE VILLAGE PROJECT

When Councilman Mumpower asked for the reason for the continuance, Interim Planning & Development Director Shannon Tuch said that the applicant was exploring their signage options and they came up with a plan, but after discussing some of staff's concerns, they requested more time to further refine their plans.

At the request of the developer, Councilman Mumpower moved this public hearing until June 24, 2008. This motion was seconded by Councilwoman Cape and carried unanimously.

D. PUBLIC HEARING TO CONSIDER REZONING A PORTION OF ONE LOT ON SAND HILL ROAD FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT TO INSTITUTIONAL DISTRICT

ORDINANCE NO. 3623 - ORDINANCE TO REZONE A PORTION OF ONE LOT ON SAND HILL ROAD FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT TO INSTITUTIONAL DISTRICT

Mayor Bellamy opened the public hearing at 6:43 p.m.

Urban Planner Black Esselstyn said that this is the consideration of an ordinance to rezone a portion of one lot on Sand Hill Road from RM-7 Residential Multi-Family Low Density District to Institutional District. This public hearing was advertised on May 16 and 23, 2008.

The applicant is requesting a rezoning of a portion of a parcel from RM-6 to Institutional. The area of the entire parcel is 3.85 acres, but the area to be rezoned is only 0.57 acres. The majority of the parcel is essentially undevelopable, owing to its narrow shape, stream presence, lack of road access, topographic challenges, flood hazard areas, and the presence of a sewer line and easement. The unusual parcel outline was created when the interstate corridor divided properties in this area.

The portion proposed for rezoning abuts Sand Hill Road. Though roughly half an acre of the property close to Sand Hill Road is better suited for development, the property has remained on the market for a number of years, limited by the obstacles previously mentioned as well as the proximity to the interstate, which reduces its appeal for a residential use.

The applicant is interested in using the portion of the property for a model home, a building that would resemble a single-family residence but which would have to be classified as an office. Such an office use would not be permitted under RM6 zoning, but would be allowed in the Institutional district. Wishing to avoid the delay and expense of developing concept plans that might later change, the applicant elected to pursue a straight rezoning, recognizing the constraint that only rezoning a small fraction of the site would severely limit potential uses.

Of the less than 25,000 square feet of property proposed for rezoning, approximately 9,000 square feet would be reserved for setbacks and buffers. Other areas are impracticable for their development due to the topography, or could not be used for a building due to the proximity of the sewer line.

The applicant has expressed an interest in providing public access to an extensive part of the property bordering the creek for use as a greenway or nature trail. It should be noted that there is no written commitment of such a future action, and that, since this matter is under consideration as a straight rezoning, there is no way for City Council to add this as a condition. Similarly, it should be noted that if property or an easement is donated to the City of Asheville, there is no guarantee that the City will be able to construct the improvements necessary for a greenway within any specified period of time.

Further, as with the applicant's stated development intentions, the park proposition is provided as background information. The potential for a future passive recreational use for the eastern part of the parcel was one additional consideration used by staff in limiting the extent of the proposed rezoning; if the entire parcel were to be rezoned to Institutional, a landscape buffer more than a quarter-mile long might be required, even along a linear open space or greenway.

The proposed zoning district, Institutional, matches the zoning on the opposite side of Sand Hill Road. A section of the road right-of-way, measuring less than 0.3 acres, would also be rezoned to make this a seamless extension of the existing zoning district. The Institutional District was established to reserve land for the development of major educational facilities, major medical facilities and other complementary and supporting uses such as health related developments, office developments, and public services. Development standards for uses in this district are established to minimize conflict with adjacent land uses.

The existing zoning district, RM-6, Residential Multi-Family Low Density District was established to permit a limited range of low density multi-family housing types along with single-family detached and attached residences. This district is intended to provide a transitional area between single and multi-family areas, and to provide a compatible mixture of these housing types by limiting the size and density of multi-family development. This district is also intended for areas where low density multi-family development is appropriate but where environmental constraints and infrastructure limit development potential. Non-residential development normally required to provide the basic elements of a balanced and attractive residential area is also permitted. The Manufactured Housing Overlays that exist on the property would not be affected by the proposed rezoning.

As a straight rezoning request, the proposed rezoning, if approved, would present a formidable list of permitted uses; however, the size of the subject area and other constraints effectively limit the scope of future construction so as to render high-impact development impracticable. The rezoning would result in a split zoned parcel, but the line effectively divides the developable portion from the section with severe development constraints, and the boundary could be used in the future if the eastern portion is subdivided off for conservation.

At their February 6, 2008, meeting, the Planning and Zoning Commission voted 5-0 to recommend approval. There was no indication of neighborhood opposition at the meeting, nor had there been any communicated to staff; indeed, as of this writing, staff has received one communications regarding this request.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:

- Proposed zoning district is highly compatible with areas to west and south.
- Limited size of affected area limits the potential impact of development.
- Proximity to interstate overpass limits interest for residential development.
- Infrastructure is present to support small-scale non-residential development.

Cons:

- Would result in a split-zoned parcel.
- Would result in a small loss of residentially zoned land.

The proposed rezoning could potentially provide some relief to the property owner for an unusually difficult piece of land with restrictive zoning, and the limited size of the affected area would temper the prospective impact of a more permissive zoning district.

Mayor Bellamy closed the public hearing at 6:48 p.m.

Mr. Esselstyn responded to various questions/comments from Council, some being, but are not limited to: what are the uses allowed in the Institutional District and would any of them be detrimental to people living nearby; does staff have any concerns about drainage or erosion from the site; why was the Institutional District chosen; and what is the height limitation in the Industrial District.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3623. This motion was seconded by Councilman Newman and carried unanimously.

ORDINANCE BOOK NO. 24 - PAGE 467

E. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR THE ASHEVILLE REGIONAL AIRPORT'S AIRCRAFT STORAGE HANGAR LOCATED AT 168 WRIGHT BROTHERS WAY, ALONG WITH MODIFICATIONS TO THE LANDSCAPING REQUIREMENTS

ORDINANCE NO. 3624 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR THE ASHEVILLE REGIONAL AIRPORT'S AIRCRAFT STORAGE HANGAR LOCATED AT 168 WRIGHT BROTHERS WAY, ALONG WITH MODIFICATIONS TO THE LANDSCAPING REQUIREMENTS

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

City Attorney Oast also said that the Authorized Practice Committee of the North Carolina State Bar has issued an advisory opinion that appearing in a representative capacity for a party before a local governmental body in a quasi-judicial proceeding is the practice of law, especially with respect to such aspects of the hearing as examining or cross-examining witnesses, or

advocating for legal conclusions or results. This does not prevent persons, including land use professionals, from presenting information or expressing opinions within their knowledge or area of expertise.

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 6:54 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Jessica Bernstein submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Bernstein said that this is the consideration of the issuance of a conditional use permit for the Asheville Regional Airport's Aircraft Storage Hangar located at 168 Wright Brothers Way, along with modifications to the landscaping requirements.

Ms. Bernstein said that the applicant is requesting review of site plans for a new airplane storage hangar at the Asheville Airport. This project is considered a Level III review pursuant to Section 7-5-9(a)(1)b. of the UDO, which states "properties located within 1,500' of each other, under the same ownership and/or developed by the same developer over a period of 3 years or less shall be considered to be one development and reviewed as such." Ordinarily this project would be considered as a Level 1 on its own, however due to Section 7-5-9(a)(1)b. listed above and the projects approved in the past three years (Level 1 - May 2007; Level 2 - August 2005; Level 2 – March 2005), this is considered as a Level III review.

The project site is an 11.69 acre site located at the southwest corner of Wright Brothers Way and Aviation Way, just north of the Asheville Regional Airport passenger terminal and is zoned Industrial (Attachment to City Exhibit 3 - Aerial Map). Surrounding properties are also zoned Industrial and are all occupied by airport-related uses. The applicant is proposing to construct a 22,000 square foot aircraft storage hangar and associated parking area on a small portion of the site. The structure will be 42 feet in height (Attachment to City Exhibit 3 - Geometric Layout Plan).

Landscaping is required for this site and includes a street buffer, street trees along Wright Brothers Way and Aviation Way, vehicular use and building impact landscaping (Attachment to City Exhibit 3 - Landscape Plan). Due to the nature of the bulk of the parcel as impervious airport/runway-related surface, the applicant is requesting alternative landscaping to plant a small number of trees on the adjacent parcel to the south (property under same ownership but with a separate PIN. This request must be considered and approved by City Council.

A small parking lot with 21 spaces (1 handicapped) is included, adjacent to the hangar to the south and accessed from Wright Brothers Way. This lot exceeds the parking required by 20 spaces, however the parking area is also intended to serve adjacent hangars and nearby buildings. In addition, this lot aids in compliance with Federal Aviation Administration (FAA) and Department of Homeland Security Transportation Security Administration regulations to prohibit vehicles from aircraft operations areas (inside the fence). The project proposes a 5 foot sidewalk along Wright Brothers Way.

Additional aviation improvement projects are anticipated to be submitted by the Asheville Regional Airport and/or its carriers in the near future and these proposals may be evaluated by

Planning Department staff as amendments to this Conditional Use Permit. The amendment request requires returning for review and approval by the Technical Review Committee and City Council, but does not require review by the Planning & Zoning Commission.

City Council must take formal action as set forth in Section 7-5-5(e)(3) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case pursuant to Section 7-16-2(c). Staff's review indicates that all seven standards are met as proposed in the site plan.

(1) **That the proposed use or development of the land will not materially endanger the public health or safety.**
The project will meet State building code requirements and will be reviewed in detail by the Technical Review Committee to ensure compliance with safety requirements.

(2) **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
All land in the immediate vicinity of the site is also operated by the Asheville Regional Airport and supports private and public aviation. The proposed airplane storage hanger will support and complement adjacent uses. There are no significant or topographic features on the site that raise any conflict other than the need to plant some of the required landscaping offsite, due to the nature of the bulk of the parcel as paved apron area for flight craft.

(3) **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
Abutting property is also owned by the Asheville Regional Airport. The proposed airplane storage hangar supports and complements the existing uses, especially due to existing storage hangars being currently filled to capacity. It should not injure the value of abutting or adjoining property.

(4) **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
The proposed airplane storage hangar is similar to other storage hangars in the immediate vicinity and is compatible with the adjacent public airport. This proposal is in harmony with the scale, bulk, coverage, density and character of the other uses in the area.

(5) **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
The 2025 Plan identifies that the airport is a "major economic generator for the community, with an estimated $199.8 million in annual direct, indirect and multiplier benefits, creating an estimated 2,956 jobs." Improvements to the airport, such as this one, assist in maximizing the efficiency and success of this regional transportation hub. General aviation additions are specifically stated as a needed long-term improvement of the Plan (pg. 146). Improvements to the Asheville Regional Airport indirectly support the City's goals relating to Economic Development and Sustainability, as maximizing the efficiency of the airport will make it easier for visitors (and residents) to travel to and from the area.

(6) **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
The proposed hangar is located just off I-26 at the Airport Road exit within the Asheville Regional Airport, which places the project in an easily accessible and appropriate location. The project has been reviewed by the Technical Review Committee and has been found to have adequate access to infrastructure.

(7) **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
Based on the proposed use of the subject project, it is reasonable to conclude that it would probably generate very little new traffic. The project will provide covered storage for airplanes and it will more than likely serve the airplanes that already exist. Therefore, the overall traffic impact in the immediate area of the subject project should be minimal.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

This Level 3 project was approved with conditions by the Technical Review Committee on April 7, 2008, and recommended for approval by a (5-0 vote) by the Planning and Zoning Commission on May 7, 2008; there has been no opposition to the proposal.

Pros:
- Proposal contributes to the efficiency of operations at the Asheville Regional Airport.
- Parking lot will serve the needs of other existing storage hangars on the site and assist in complying with federal regulations.

Cons:
- None identified

Staff recommends approval of the airplane storage hangar, as well as the landscape modifications, however, they encourage the applicant to undertake a Master Planning process so that these small scale improvements don't need to go through a Level III review each time.

After rebuttal, Mayor Bellamy closed the public hearing at 6:57 p.m.

Based on the above findings and the analysis provided in the staff report, Councilman Mumpower moved to adopt Ordinance No. 3624, approving the conditional use permit adopting the Master Plan for the Asheville Regional Airport Authority Airport Storage Hangar, with the requested landscape modifications, subject to the following standard conditions: (1) The project shall comply with all conditions outlined in the TRC staff report dated April 7, 2008; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with cut-off fixtures and directed away from adjoining properties and streets. A detailed lighting plan will be required upon submittal of detailed plans to be reviewed by the TRC; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; and (5) This project will undergo final review by the TRC prior to issuance of any required permits. This motion was seconded by Councilman Newman and carried unanimously.

ORDINANCE BOOK NO. 24 – PAGE 470

V. UNFINISHED BUSINESS:

A. BUDGET REVIEW

Chief Financial Officer Ben Durant said that at this third Fiscal Year (FY) 2008-09 budget worksession and he anticipated Council further discussing its budget priorities for the upcoming fiscal year. In addition, staff will be available to provide follow-up on any issues that have been discussed at previous worksessions.

The FY 2008-09 Proposed Budget for the General Fund was presented to City Council at the May 13th formal meeting. At the May 20th worksession, staff presented an overview of the FY 2008-09 Proposed Budgets for the City's seven Enterprise Funds and provided further information on the proposed FY 2008-09 General Capital Improvement Program. The agenda for the third worksession on May 27th includes additional time for City Council to discuss its budget priorities for FY 2008-09. Staff will be available to answer questions and provide follow-up on issues that have been discussed at previous worksessions. Staff has also provided in a separate memorandum answers to questions raised by City Council at both of the earlier budget worksessions and during presentation of the Quarterly Financial Report on May 13th.

Staff recommends that Council continue discussions of its FY 2008-09 budget priorities and provide staff with direction on future budget worksession agendas.

Throughout discussion, City staff responded to various questions/comments from Council, some being, but are not limited to: what percentage of our transit budget comes from fares and how much of a subsidy does that result in when you put all the other contributions that are made from City, state and federal tax dollars; need to look at transportation in a comprehensive manner; departments are so constrained they can't make the kind of investments in efficiency that will save the community money in the long run (fleet, building management, etc.); need for departments to find some creative options to begin managing the rising energy price in a way that is more fiscally responsible; need to look at ways to increase transit ridership; Fund Balance was used to take care of some important needs and request to see that grow in the future; this Council is providing fewer subsidies to festivals and non-profits and looking for ways to allow users of the golf course to pay their own way; need for a good solid Fund Balance; is there any direct correlation between the existence of drug activity and gang activity in close proximity to one another; and how bad is our gang problem in a typically nice neighborhood.

Council members made various comments regarding the budget outlining their concerns and supports.

City Manager Jackson said that regarding the transit route study, we have gone through the Request for Proposals and will soon bring recommendations to Council so they have facts to make long-range decisions about were do we service and how we service.

Mayor Bellamy said that she continues to get correspondence about our gang problem. She would like to see more support for some solutions to the issues of shootings in neighborhoods. She advocated finding more resources. She reviewed some applications that didn't get funding from the Community Development Block Grant (CDBG) program and asked Council to support finding some funding for some alternative initiatives to address gangs. The addition of the two gang officers is good, but we need more community based solutions.

Councilman Newman, member of the Housing & Community Development Committee, said that they reviewed the applications for CDBG funding this year and it was a difficult process due to the limited funding available. There were some strong proposals for important initiatives in the community to address gangs and job opportunities for young people.

In response to Councilman Newman, Councilwoman Cape said that the Planning & Economic Development (PED) Committee did not review any applications as there is no process for that Committee to be a funding mechanism.

Councilman Mumpower felt the gang issue is a distraction from the core issue of the drug thug culture and open air drug market. Council has made a commitment to eliminate the open air drug market and has asked the Police Chief to task that goal. He felt that if the Police Chief needs more resources, he should come to Council with specific requests and at that time Council can provide him with additional assistance.

Councilwoman Jones would support revisiting specific proposals already received either through the Housing & Community Development Committee or through the Outside Agency Committee requests that address the gang issues.

After discussion, it was the majority of Council's consensus to review the proposals received by the Housing & Community Development Committee and/or the Outside Agency Committee that addressed gangs and/or job opportunities for young people and directed staff (including the gang prevention officers) to narrow down the funding proposals with a rating system (around gang prevention issues) to help Council made some decisions, along with finding resources to support these initiatives. City Manager Jackson said that he would provide Council with the requested information before June 24 - the date the budget is scheduled to be adopted.

City Attorney Oast noted that in both houses the Street Gang Violence Prevention Act has been introduced and he will provide Council with a report on that.

Mayor Bellamy noted that the majority of this Council has supported our Police Chief when he has requested additional funding for police officers. As she did on May 13, 2008, she asked for staff to provide an analysis of how much has been spent in public safety over the past three years. Regardless of that amount, we still have gangs and she wants our neighborhoods and children to have a better solution to gangs.

B. RESOLUTION NO. 08-113 - RESOLUTION OPPOSING HOUSE BILL 2367 ESTABLISHING A MORATORIUM ON INVOLUNTARY ANNEXATIONS

City Attorney Oast said that this is the consideration of a resolution expressing opposition to House Bill 2367, adopting a moratorium on annexation

As Council was advised last week, the House Select Committee on Municipal Annexation has introduced a bill that would impose a moratorium on involuntary annexation until June 30, 2009. As drafted, the bill would prohibit cities from initiating annexation, and would delay the effective date of annexations that are in progress, including annexations that have been completed, but are the subject of litigation. As indicated in my Staff Report of May 20, 2008, this would affect four annexations currently being litigated by the City.

The resolution explains how the City of Asheville approaches annexation, and how the proposed moratorium would affect those annexations that are being challenged. It also directs me to transmit a copy of the resolution to our local delegation, the President pro tempore of the Senate, and the Speaker of the House.

This action is consistent with the Strategic Operating Plan in that it promotes the continued availability of one of the tools for planning identified in the 2025 City Plan.

Pros:
- Continued availability of annexation as an element of the City's comprehensive plan
- No delay in effectiveness of completed annexations beyond termination of litigation

Con:
- None noted

Councilman Mumpower said that he is against the concept of forced annexation but he is also against the state trying to artificially control the City with a moratorium before they are willing to actually deliberate on annexation policies. He asked the resolution be amended to read as follows: "(1) The Asheville City Council opposes House Bill 2367, and opposes any bill that would have the effect of suspending the power of municipal annexation for North Carolina cities prior to legislative action on annexation policies." He felt if they want to deliberate annexation, fine, but don't free us in the interim while they take their time. He felt the moratorium is an artificial way of controlling the process without assuming responsibility for action.

Councilwoman Cape suggested the following amendment: "(1) The Asheville City Council opposes House Bill 2367, and opposes any bill that would have the effect of suspending the legislatively approved power of municipal annexation for North Carolina cities."

Councilman Newman suggested the following amendment: "(1) The Asheville City Council opposes House Bill 2367."

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Cape moved for the adoption of Resolution No. 08-113, with the amendment to (1) to read "The Asheville City Council opposes House Bill 2367." This motion was seconded by Councilman Newman and carried unanimously.

RESOLUTION BOOK NO. 31 – PAGE 186

VI. NEW BUSINESS:

A. ORDINANCE NO. 3625 - ORDINANCE MAKING MODIFICATIONS TO THE SOLID WASTE MANAGEMENT ORDINANCE

Solid Waste Manager Wendy Simmons said that the purpose of this item is to review modifications to the Solid Waste Management Ordinance to bring the ordinance up-to-date in regards to Sanitation Division operations and enforcement policies to facilitate more effective compliance actions.

She said that the ordinance (1) was last amended in 1996; and (2) is outdated when compared to 2008 practices.

The new ordinance (1) includes automated trash collection program; (2) up to date trash and brush collection policies; and (3) streamlines enforcement.

Revisions are proposed for the City's Solid Waste Management Ordinance (Chapter 15 of the Code of Ordinances) to ensure it more accurately reflects the current operations and policies of the City's Sanitation Division. The underlying principle guiding all Sanitation Division operations is that all customers, including households and businesses, receive an equal level of service. To continue to operate within this guiding principle, updates to Chapter 15 are necessary.

Cur.ent Operational Updates:

In 2000, the City implemented the use of 95 gallon roll-carts in conjunction with automated side loading garbage trucks to collect trash. The city's ordinance has not been updated since the automated trash collection system was introduced. With the implementation of the automated program, specific policies and procedures were put in place via department policy; however, to facilitate enforcement action(s) for violations revisions to the ordinance are necessary.

Considerable changes were made throughout the ordinance to reflect current Sanitation Division operations. The following is a listing of key proposed changes:

- Automated Waste Collection: The switch to an automated collection system required comprehensive revisions throughout the draft document. The *definitions* section of the chapter was revised and enhanced. Current departmental policies and rules were incorporated into the draft changes to reflect operational protocols put into place immediately after the automated program began in 2000.

- Commercial Establishments: Ordinance language was updated to be consistent with the current ordinance regarding: 1) Clear definition of collection services to commercial properties, and 2) that 'multiple residential complexes' are 'one single unit' and that such properties are provided one (1) roll cart that is collected once per week. Additional roll carts can be rented from the city, but they too are only collected once per week (see Section 15-40).

Enforcement and Penalties:

The enforcement section of the chapter has been streamlined to allow for more aggressive corrective measures when necessary. The structure of fines has also been revised to better reflect the cost of noncompliance. Benchmark data from other N.C. municipalities regarding current enforcement and penalties are illustrated in the following table:

Local Government	Initial Compliance Deadline	Penalty	Other
Asheville	7 days	$50	Other penalty options: community service, imprisonment for not more than 30 days, bill cost to City for correction of violation
Buncombe County	15 days	$50-$500	Other penalty options: imprisonment for not more than 30 days, bill cost to County for correction of violation
Burlington	Flexible	$50-$500	Other penalty options: imprisonment for not more than 30 days, $25 fee for delinquent payments
Greensboro	14 days	$75	
Hickory	14 days	$75	
High Point	Flexible	$500	
Kernersville	Flexible	$75-$500	Other penalty options: imprisonment for not more than 30 days

*State law references: Violation of city or town ordinances declared a misdemeanor punishable by fine not exceeding $500.00 or imprisonment not exceeding 30 days, G.S. 14-4

Asheville's enforcement and penalties:

In 2007, 864 complaints were investigated by the Sanitation Division. Most complaints were resolved without the need to issue written notices of violation. The table below notes the quantity and type of enforcement actions taken by the Division.

369

2007 Enforcement & Penalties

Complaints investigated	864
Written warnings issued	147
Notice of violations issued	80
Citations collected	5

The five penalties collected in 2007 varied in magnitude, and the fine amounts were as follows: $50, $150, $200, $550, and $8,000.

- Proposed Enforcement and Penalty changes:
    - Compliance timeline: The current ordinance requires that violator(s) be given at least seven (7) days to correct an issue of non-compliance. This language has been removed to give enforcement staff the ability to set a variable compliance deadline not to exceed thirty (30) days. A single extension not to exceed 30 days can also be issued under the updated version. This flexibility allows for more appropriate compliance timelines to be set by enforcement staff. See Section 15-52.
    - Automated rollout container usage: The ordinance proposes to restrict the use of city-owned automated rollout containers to provide remedy against businesses or residents who might improperly use such receptacles. See Section 15-37(b).
    - Street refuse receptacle usage: The ordinance proposes to prevent residents and businesses from using city-owned street refuse receptacles to dispose of their waste. Street refuse receptacles are intended for pedestrian use, and the revisions will restrict businesses and residents from improperly using the receptacles. See Section 15-36(c) and 15-40(d)
    - Brush collection: The ordinance will clarify the Division's current policy to not collect brush cut by private contractors by providing greater enforcement authority. See Section 15-38 (g).
    - Penalties: The current ordinance lists a penalty at $50.00 per day for each day a violation exists. The revised ordinance proposes to increase such penalties to $100.00 per day for each day the violation exists (for up to 30 days). If the violation continues after 30 days, the penalty shall decrease to $20.00 per day. In no event shall the amount of the civil penalty exceed $5000.00. These changes are proposed to be more in line with administrative costs to the city for such noncompliance. See Section 15-52.

The revisions of the Solid Waste Ordinance maintains current solid waste and recycling trends, ensuring proper management of waste applicable to greening initiatives and sustainable use of resources.

Pros:

- Up-to-date ordinance
- Fees more reflective of cost of non-compliance, making the ordinance more effective
- Compliance timeline can be set based on severity of non-compliance
- Strengthened enforcement for improper use of city-owned automated rollout containers and street refuse receptacles
- Strengthened enforcement for improper disposal of brush cut by private contractors

Cons:

- Fines increase by $50.00
- Elimination of fixed seven (7) day compliance deadline

Fiscal Impact:

- Minimal increase in fines collected for non-compliance with city ordinance
- Negligible fiscal impact

There was a brief discussion, initiated by Councilwoman Jones, about the citation for violation decreasing after 30 days.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3625. This motion was seconded by Vice-Mayor Davis.

Mayor Bellamy expressed concern that based on the narrowness of the definition of "contractor work" this ordinance may penalize families or senior citizens who can't afford to have a tree removed.

In response to Mayor Bellamy, Ms. Simmons said that she could add language to the ordinance regarding storm damage or wind. She read provision (g) in the proposed ordinance as follows: (g) Contractor Work: Tree and shrubbery branches, limbs and trimmings cut by persons engaged in landscaping or tree service enterprises or by other commercial or for-hire persons or those accumulations resulting from land clearing operations shall not be collected by the City. Such branches or limbs and trimmings shall be collected and removed by the commercial or for-hire person doing the cutting or trimming."

City Attorney Oast felt that as the provision is written, the ordinance would not preclude, in the event of storm damage, people from dragging tree branches to the street to be collected. He felt that the provision accommodates the interest of people who want to clean up their own storm damage and addresses the issue of the people who are doing it for-hire.

After a short discussion Mayor Bellamy's concern, Assistant City Attorney Martha McGlohon suggested that provision (g) be amended to read: "Contractor Work: Tree and shrubbery branches, limbs and trimmings cut by persons engaged in landscaping or tree service enterprises or by other commercial operations resulting from land-clearing operations shall not be collected by the City. Contractor work shall be defined as any work engaged in for-profit and the removal of such branches, trimming or land-clearing debris shall be performed at the expense of the contractor."

Councilman Mumpower withdrew his motion to adopt Ordinance No. 3625 as he did not feel the language was sufficient to address Mayor Bellamy's concern.

Councilman Newman then moved to adopt Ordinance No. 3625, with the following amendments (1) the modified language of provision (g) as read by Assistant City Attorney McGlohon; and (2) that the penalties remain at $100 per day and not decrease after 30 days. This motion was seconded by Councilwoman Jones and carried on a 4-2 vote, with Mayor Bellamy and Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 24 – PAGE 475

B. RESOLUTION NO. 08-114 - RESOLUTION APPROVING ADDITIONAL HOUSING TRUST FUND FUNDING TO VOLUNTEERS OF AMERICA FOR

THE CONSTRUCTION OF 63 UNITS OF AFFORDABLE SENIOR RENTAL HOUSING AT 138 SPRINGSIDE ROAD

Community Development Director Charlotte Caplan said that this is the consideration of a resolution approving a $54,731 Housing Trust Fund (HTF) loan for the development of sixty-three (63) units of affordable senior rental housing.

Staff has received an application for funding from Volunteers of America for their project at 138 Springside Road in South Asheville. Funding for this project was originally approved in March, 2007 in the amount of $445,269. The original application was for $500,000; however, funds were not available at that time to fund the entire request. Due to a declining tax credit market and increasing construction costs, the additional funds are now urgently needed to close a substantial funding gap and allow the project to move forward. The City has also committed $164,077 in HOME funds to this project.

The current balance in the Housing Trust Fund is $561,666. Request was reviewed and recommended for approval by the Housing and Community Development Committee on April 21, 2008.

This action complies with the Strategic Operating Plan in that the project is supportive of the City's efforts to provide safe, decent affordable housing to the citizens of Asheville.

In the Consolidated Housing & Community Development Action Plan, this project addresses the plan's highest priority of developing affordable rental housing.

Pros:

- Allows project creating 63 units of affordable housing to move forward.
- Leverages $5.8 million of private equity through the low-income housing tax credit program.
- 30 years of guaranteed affordability.

Cons:

- Further increases in construction costs could still jeopardize the project.
- Designation as senior housing does not meet the affordable housing needs of other age groups within the population.

There will be no additional impact on the general fund since funds have already been allocated to the Housing Trust Fund. The project will increase the current tax base by an estimated $5 million.

Staff recommends that City Council adopt a resolution approving $54,731 in additional funding to Volunteers of America for the project at 138 Springside Road.

Councilman Mumpower could not support the motion as this is a subsidized project with borrowed federal dollars. He felt we are contributing further to our $10 Trillion federal deficit that must be paid back by our children and grandchildren.

Councilwoman Jones said that these are not federal dollars being borrowed, but City dollars that have been allocated.

Mayor Bellamy also noted that this money will be paid back by the developer.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Jones moved for the adoption of Resolution No. 08-114. This motion was seconded by Councilwoman Cape and carried on a 5-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 31 – PAGE 187

C. RESOLUTION NO. 08-115 - RESOLUTION AUTHORIZING A GRANT TO THE HOUSING AUTHORITY OF THE CITY OF ASHEVILLE FOR A STUDY OF THE FEASIBILITY OF SEEKING A HOPE VI GRANT

Community Development Director Charlotte Caplan said that this is the consideration of a resolution to grant $18,000 to the Housing Authority of the City of Asheville (HACA) for a study of the feasibility of seeking a HOPE VI grant.

HOPE VI is a HUD program for revitalizing distressed public housing developments, through rehabilitation or demolition and new construction, to create mixed-finance and mixed-income housing that is radically different from traditional public housing "projects".

In 2004, Council allocated $18,000 for a preliminary study to establish the feasibility of seeking HOPE VI funds to redevelop one or more of the Housing Authority's public housing complexes. The consultant withdrew before the contract was finalized, but the funds - part of a small general fund capital appropriation for "Affordable Housing Infrastructure" - have been preserved in the expectation that the Housing Authority would continue to explore the concept.

Over the last few months, staff has worked with the Housing Authority to revive the study and find a new consultant. Through a properly conducted RFQ process, HACA has selected Lawrence D. Holt & Associates and developed a scope of work.

The study is deliberately limited to exploring the feasibility of applying for HOPE VI funding or of accessing other major financing sources (a "HOPE VI look-alike). The next step in the process, developing a detailed proposal, would be a major undertaking which would likely cost in excess of $200,000. Only about five HOPE VI grants are available each year nationwide and only highly-developed proposals have any chance of success.

This action complies with the Strategic Operating Plan in that the proposed study directly addresses the affordability objective: "Continue to pursue redevelopment of public housing with a HOPE IV-type project".

A HOPE VI project has the potential to address multiple priorities of the Consolidated Housing and Community Development Plan (rental housing, homeownership, long-term affordability, efficient use of land, etc.).

Pros:

- Funds initial step towards obtaining major outside investment for the revitalization of distressed public housing.
- Will provide information needed to determine whether or not to proceed with more costly planning.

Con:

- Does not address the desirability and social consequences of undertaking a HOPE VI project.

Council has already appropriated sufficient funds.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into a grant agreement with the Housing Authority, in the amount of $18,000, for a HOPE VI feasibility study.

Councilman Mumpower spoke against spending $18,000 for a feasibility study that we have very little chance of obtaining a HOPE VI grant.

At the request of Councilwoman Cape, Mr. David Asher explained that the scope of the work was expanded to include accessing other major financing sources (a "HOPE VI look-alike).

Councilman Newman felt that for a community of our size we have a very high percentage of land in public housing. He was proud Council is taking their first step in looking seriously at the question of "Is the current configuration of public housing developments we have in the City the same way we want them to look in 50 years from now?"

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Jones moved for the adoption of Resolution No. 08-115. This motion was seconded by Vice-Mayor Davis and carried on a 5-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 31 – PAGE 188

D. RESOLUTION NO. 08-116 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A THREE-YEAR CONTRACT FOR TECHNICAL SERVICES WITH THE LAND-OF-SKY REGIONAL COUNCIL TO MANAGE THE ENVIRONMENTAL PROTECTION AGENCY BROWNFIELDS GRANTS IN ASHEVILLE'S RIVER DISTRICT

Urban Planner Stephanie Monson said that this is the consideration of a resolution authorizing the City Manager to execute a three year contract for technical services with Land of Sky Regional Council (LOSRC) for grant administration services for the City of Asheville for EPA Brownfields assessment grants.

On August 14, 2007, Asheville City Council authorized LOSRC to submit two brownfields grant applications to EPA on behalf of the City of Asheville. The applications were successful, and on April 10, 2008, the City of Asheville was recognized as the recipient of $400,000 in assessment for hazardous materials sites and petroleum contaminated sites in Asheville's River District.

The proposed management structure of the program, as described in the technical services agreement entered into by LOSRC and the City of Asheville and as submitted to the EPA in the successful grant application, proposed that LOSRC would perform the administrative function of the grants for the City. The City of Asheville does not currently have staff that possess expertise in managing a brownfields program; alternatively LOSRC has managed a very successful Regional Brownfields Initiative since 2002. Staff has ascertained that the costs of utilizing LOSRC services would be considerable less to the taxpayer than redirecting resources internally or requesting additional funding for a new program.

The execution of this contract would support the implementation of Council's Strategic Plan, most directly in the area of Sustainability, e.g. by promoting sustainable, high density infill growth that makes efficient use of existing resources; and by pursuing a stronger riverfront redevelopment partnership with other agencies and governments.

This action complies with the Wilma Dykeman Plan in that the Wilma Dykeman Plan contains three focus areas: appropriate zones for development; an economic revitalization analysis/recommendation; and transportation/roadway changes to implement greenways and revitalization. The River District Brownfields Program will support all three of these areas, mainly through the preservation of undeveloped land and historic and cultural sites (i.e. via infill development). LOS' existing RBI has identified over 200 sites in the River District area as underutilized.

This action also complies with the River Redevelopment Plan in that this redevelopment plan mostly frames the issues that have been identified in prior plans and public comments (such as the Wilma Dykeman Plan); the summary section of this plan is an effort to strategize funding possibilities for implementation; The River District Brownfields Program not only complies with the intent of the plan but strengthens it by providing another possible funding mechanism for plan implementation.

In addition, this action complies with the Asheville's 2025 Plan in that the River District Brownfields Program directly supports Goal 1, Strategy 6 of the Land Use and Transportation section of the 2025 plan: "The City should pursue compatible adaptive reuse and infill development in order to actively promote appropriate development and redevelopment within the City and its ETJ.; Through the City's Economic Development office, identify and market brownfield sites, giving preference to the development of these sites". This initiative also indirectly supports several other goals, and does not conflict with any goals.

Pros:

- City promotes sustainable infill development
- City promotes safety of citizens through potential clean up of hazardous materials in the River District
- City will expand its toolbox of incentives for sustainable development without having to redirect current or direct substantial new resources.
- No new city staff required to administer this three year grant program.

Con:

- External management of a City of Asheville initiative.

The cost to administer the program/grants was included as part of the successful grant application to EOA and is to be paid for by the brownfields grant awards in an amount not to exceed $180,000. This contract and the associated costs are to cover the entire three-year period (contract covers July 1, 2008, to September 30, 2011).

Staff recommends Council authorize the City Manager to execute the contract.

Ms. Kate O'Hara, representing the Land-of-Sky Regional Council, spoke in support of the contract.

Ms. Monson and Ms. O'Hara responded to various questions/comments from Councilman Mumpower, some being, but are not limited to: what percentage of these dollars will go into staff administration vs. actual clean-up; and how hard is it to assess when we have a clean-up of a brownfields problem and have we invested prior dollars in doing that.

Councilman Mumpower could not support the EPA's bureaucratic process, especially with the consideration that all of the dollars are coming from borrowed funds that our children and grandchildren will be paying for.

Councilwoman Cape said that we have success stories in our community thanks to the brownfields work. She was very supportive of the brownfields program.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Cape moved for the adoption of Resolution No. 08-116. This motion was seconded by Councilwoman Jones and carried on a 5-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 31 – PAGE 189

VII. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of May 9 – 22, 2008: Enterprise (Streets), James O. Dawkins Jr. (Police), J.W. DeGroot (Streets), Dylan Schepps (Parks & Recreation), Gary J. McDaniels (Water), Jimmy L. Mills Jr. (Transit), Greg Mosher (Water), Kim Morris (Water), Rebecca M. Sandoval (Police), Carroll Mease (Water), AT&T (Fire) and Robert Bishop (Fire).

These claims have been referred to Asheville Claims Corporation for investigation.

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Closed Session

At 8:32 p.m., Councilman Mumpower moved to go into closed session for the following reasons: (1) to consider the qualifications, competence, performance, character, fitness, and conditions of employment of an individual public officer or employee - The statutory authorization is contained in G.S. 143-318.11(a) (3); and to prevent the disclosure of information that is confidential pursuant to N.C. Gen. Stat. sec. 160A-168, the Personnel Privacy Act - The statutory authority is contained in G.S. 143-318.11(a)(2); and (2) to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorneys must be preserved, including litigation involving the following parties: Louise Pack Metcalf, Barbara Pack Holcombe, Michael Lawrence, Black Dog Realty, LLC, and Buncombe County. This motion was seconded by Councilwoman Jones and carried unanimously.

At 9:30 p.m., Councilman Newman moved to come out of closed session. This motion was seconded by Councilwoman Jones and carried unanimously.

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 9:30 p.m.

Magdalen Burleson
CITY CLERK

Terry M Bellamy
MAYOR

Tuesday – June 10, 2008 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; Councilman William A. Russell Jr.; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Vice-Mayor Davis gave the invocation.

I. PROCLAMATIONS:

ANNOUNCEMENT

Mayor Bellamy said that Asheville was visited by a delegation from Iowa to look at the success we have had with the Asheville Project. The Governor was scheduled to attend; however, due to the enormous amount of flooding they are experiencing, he could not be here. She did ask the community to pray for the individuals who are impacted by the flooding, as well as those individuals who are affected by the fires in North Carolina.

II. CONSENT AGENDA:

At the request of Councilman Mumpower, Consent Agenda Items "E," "F," "G," and "H" were removed from the Consent Agenda for discussion and/or individual votes.

At the request of Mayor Bellamy, Consent Agenda Item "D" was removed from the Consent Agenda for discussion and/or an individual vote.

A. APPROVAL OF THE MINUTES OF THE FORMAL MEETINGS HELD ON MAY 13, 2008, AND MAY 27, 2008

Summary: The following paragraph of the minutes of the May 13, 2008, meeting was amended to read as follows: "Councilwoman Cape was pleased to see the several ideas put forth by the Public Works Department to manage waste and possibly reduce the cost of the City's tipping fees at the landfill. She offered, and it was the consensus of Council to accept that offer, to contact the Waste Reduction Partners at the Land-of-Sky to see if they would be interested in helping the City look at this issue in a comprehensive manner to evaluate if any changes could be made that would address the waste stream."

B. RESOLUTION NO. 08-117 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE DOCUMENTS TO SELL PROPERTY LOCATED OFF HAZZARD STREET TO JOHN PETTY JR.

Summary: The consideration of a resolution authorizing the Mayor to convey land off Hazzard Street to John L. Petty Jr., in the amount of $2,600.

On April 22, 2008, City Council authorized advertising for upset bids pursuant to a bid from John L. Petty, Jr. for land off Hazzard Street in the amount of $2,600. The advertisement was published on April 29, 2008, and no upset bids were received.

The land off Hazzard Street is one of three (3) parcels donated to the City in 2001, by Sidney and Mary Schochet and Dale and Irwin Plisco. The parcels were remnants from Department of Transportation takings in connection with the construction of South Charlotte Street. The subject parcel is a rectangular shaped fragment lot comprising 0.03 acre±. It is zoned RS8, and it is not suitable to build on without additional land combination. The bid from John Petty is in the amount of $2,600 and is higher than the tax appraised value of the property. Mr. Petty proposes to acquire the subject parcel for assemblage with the vacant property he owns next door.

The Parks, Recreation and Cultural Arts Department has verified that this parcel does not lie within an existing or proposed greenway trail according to the Greenway Master Plan and therefore is not an advantageous property to be held for use by the City of Asheville.

Regarding the Strategic Operation Plan, being that the parcel by itself is unsuitable for any type of redevelopment, selling the parcel for assemblage will help to promote infill growth in an existing neighborhood corridor.

Pros:

- The sale will be at fair market value as established by the upset bid process.
- It will return property not needed for public use to the tax rolls.
- It will transfer responsibility for maintenance to the private sector.

Con:

- There is no negative impact.

Regarding the fiscal impact, the proceeds from the sale of this parcel will benefit the General Fund via the Parks, Recreation and Cultural Arts Department.

Economic Development staff recommends adoption of the resolution which will authorize conveyance of the property in conclusion of the sale by upset bid.

RESOLUTION BOOK NO. 31 – PAGE 190

C. RESOLUTION NO. 08-118 - RESOLUTION ACCEPTING WEST POINTE DRIVE, IN THE SARDIS ROAD AREA, AS A CITY-MAINTAINED STREET

Summary: The consideration of a resolution to accept West Pointe Drive as a city-maintained street in the recently annexed Sardis Road area of the City of Asheville.

Section 7-15-1 (e) (4) (a) of the Code of Ordinances requires that streets dedicated for public uses be accepted by resolution of the City Council.

West Pointe Drive is a developer-constructed streets that has an average width of 22 feet and a length of 0.27 miles

Transportation and Engineering Department staff and Public Works Department staff have inspected this street and recommends their change of ownership from privately- maintained streets to city-maintained streets.

Following City Council's approval of this resolution and approval, West Pointe Drive will be added to the official Powell Bill List.

West Pointe Drive is one of the streets listed in the Plan of Services for the 2007 Annexations Sardis Road Area that the City would take over for maintenance.

Pros:

- The City of Asheville will receive Powell Bill Funds from the North Carolina Department of Transportation (NCDOT) to maintain the streets.
- Homes constructed on this roadway increase the tax base in the City.

Con:

- Powell Bill Funds will probably not cover 100% of the total cost to maintain the streets.

There will be no initial financial impact to the City, although the responsibility of maintenance will belong to Public Works. The City will receive Powell Bill funds in the future to maintain the street.

Staff recommends that City Council accept West Pointe Drive as a city-maintained street.

RESOLUTION BOOK NO. 31 – PAGE 191

D. RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE URBAN TRAIL BLOCK PARTY ON JUNE 14, JULY 12, AUGUST 9 AND SEPTEMBER 13, 2008

This item was removed from the Consent Agenda for discussion and/or an individual vote.

E. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A PROFESSIONAL SERVICES CONTRACT WITH HDR ENGINEERING INC. OF THE CAROLINAS FOR THE DEVELOPMENT OF THE TRANSIT MASTER PLAN

This item was removed from the Consent Agenda for discussion and/or an individual vote.

F. RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT WITH BROWN AND CALDWELL FOR THE LOWER ROSS CREEK WATERSHED STORMWATER ENGINEERING ANALYSIS –PHASE I

This item was removed from the Consent Agenda for discussion and/or an individual vote.

G. RESOLUTION AUTHORIZING EXECUTION OF A $5 MILLION INSTALLMENT PURCHASE FINANCING CONTRACT FOR SIX FIRE TRUCKS, TWO SANITATION TRUCKS AND TECHNOLOGY ASSOCIATED WITH THE REPLACEMENT OF THE CITY'S ENTERPRISE-WIDE INFORMATION SYSTEM

This item was removed from the Consent Agenda for discussion and/or an individual vote.

H. BUDGET AMENDMENT TO SUPPORT THE PURCHASE FINANCING CONTRACT FOR SIX FIRE TRUCKS, TWO SANITATION TRUCKS AND TECHNOLOGY ASSOCIATED WITH THE REPLACEMENT OF THE CITY'S ENTERPRISE-WIDE INFORMATION SYSTEM

This item was removed from the Consent Agenda for discussion and/or an individual vote.

ORDINANCE BOOK NO. 24 - PAGE

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilwoman Jones moved for the adoption of the Consent Agenda. This motion was seconded by Vice-Mayor Davis and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

D. RESOLUTION NO. 08-119 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE URBAN TRAIL BLOCK PARTY ON JUNE 14, JULY 12, AUGUST 9 AND SEPTEMBER 13, 2008

Summary: The consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Urban Trail Block Party.

The organization responsible for the Urban Trail Block Party, Diversity is Our Trademark, is requesting through the Asheville Parks, Recreation & Cultural Arts Department that City Council permit them to serve beer and/or unfortified wine at their events and allow for consumption at these events.

The Urban Trail Block Party will be held on Saturday, June 14, 2008, Saturday, July 12, 2008, Saturday, August 9, 2008, and Saturday, September 13, 2008, from 4:00 PM – 9:00 PM within the boundaries of Eagle Street between the intersections of Biltmore Avenue & Market Streets.

This action does not tie-in with the Strategic Operating Plan nor does it comply with any of the adopted City plans.

Pro:

- Allows fundraising opportunities for charity

Con:

- Potential for public safety issues

Overtime pay for Ashville Police Department officers will be the fiscal impact.

City staff recommends City Council adopt a resolution authorizing the City Manager to approve a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Urban Trail Block Party events.

Councilman Newman moved for the adoption of Resolution No. 08-119. This motion was seconded by Councilwoman Jones and carried on a 6-1 vote, with Mayor Bellamy voting "no."

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E. RESOLUTION NO. 08-120 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A PROFESSIONAL SERVICES CONTRACT WITH HDR ENGINEERING INC. OF THE CAROLINAS FOR THE DEVELOPMENT OF THE TRANSIT MASTER PLAN

Summary: The consideration of a resolution authorizing the City Manager to enter into a Professional Services contract with HDR Engineering, Inc. of the Carolinas for the development of the Transit Master Plan.

The City of Asheville is interested in analyzing existing transit services, assessing current and future needs, determining future equipment and operational requirements, and determining how existing bus transit services can be streamlined to provide improved service levels through the development of a Transit Master Plan.

The Transit Division, Transportation and Engineering Department, issued a Request for Proposals for the Transit Master Plan on February 29 2008. The RFP closed on March 31 2008; nine proposals were received from the following firms:

- Martin/Alexiou/Bryson, PLLC
- KFH Group, Inc.
- Wilbur Smith Associates
- Perteet, Inc.
- McDonald Transit Associates, Inc
- Renaissance Planning Group
- HDR Engineering, Inc. of the Carolinas
- TMD-Transportation Management & Design, Inc.
- Connetics Transportation Group

The evaluation committee recommended HDR Engineering, Inc. of the Carolinas as the firm to provide services for the development of the City of Asheville Transit Master Plan (TMP).

The project cost will be $89,245 and 10% contingency for unforeseen expenses the consultant may incurred during the development of the contract.

The main objectives of the Transit Master Plan are as follows:

1. Analyze existing transit services and develop data to support planning and executive decisions.
2. Streamline existing transit services to attract new ridership from residents and tourist while maintaining the level of service currently enjoyed by our core ridership group.
3. Identify the potential to improve transit operations, increasing frequencies and redefining the routes according to the demand.
4. Analyze and recommend present and future route structure.
5. Identify transfer facilities that better position the implementation of future transit improvements.
6. Identify funding opportunities.

The Transit Master Plan will analyze the transit system as a whole, and will provide recommendations in the short, medium, and long term scenarios (5, 8 -10 and 15 years respectively).

We have continued to update the Transit Commission on the status of this project. They approved the master plan steering committee and are supportive of our efforts to move forward on this project.

This project is in alignment with the Strategic Plan adopted by City Council in that the Transit Master Plan will support the areas of environmental sustainability, promoting emission reductions through transit and identifying a sustainable funding structure for transit.

The project complies with the City Development Plan – 2025, Transportation Goals and Strategies, as follows: Goal VI: Develop a transit system that is capable of meeting the needs of

all residents of and visitors to the region. Goal X: Develop a comprehensive set of implementation strategies intended to reduce local vehicle miles traveled in accordance with the State of North Carolina transportation policies.

Pros:

- The development of the transit master plan will provide the tools to reshape the transit system accordingly to current ridership and development.
- The TMP will identify future opportunities for growing in a planned and organized way.
- The TMP will make recommendations related to technology, transit facilities and funding opportunities.

Cons:

- None.

The project cost will be $89,245 and 10% contingency for unforeseen expenses during the development of the master plan.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into a professional services agreement with HDR Engineering, Inc. of the Carolinas for the development of the City of Asheville Transit Master Plan.

Mr. Mike Fryar urged City Council to vote against this agreement in that other studies have not been followed.

Councilman Mumpower felt that at a time we are about to implement a new managerial structure for the Transit System, the timing of this study is less than ideal. He also felt that our studies for the most part offer a duplication of effort and investment of our limited dollars with marginal return.

Councilwoman Cape wanted to make sure that we are not doing this study in isolation of the other plans, e.g., pedestrian plan and bike plan, because we want to make sure that we are getting a multi-modal comprehensive transportation picture. She felt that transit is an opportunity in our community to create the kind of infrastructure that will drive the infill development and understanding that is important.

In response to Vice-Mayor Davis, Director of Transportation and Engineering Cathy Ball said that the money for this agreement is budgeted in this fiscal year. They will be trying to create a system and develop it into a real option for people to be able to use. Through the Federal Transit Administration we can't expand the system or make huge changes to it until we do have a completed study. The overall hope is that it will save the City a lot of money. We hope the consultant will bring us ideas that have been used in other places to save money and reduce our operational costs as well as bring us opportunities for other funding options. She felt this is a great opportunity for the City.

Councilwoman Jones said this is an opportunity to find cost efficiencies and improve our revenue base through attracting new ridership. She asked staff to include the Tourism Development Authority in the conversation of how the tourism industry interfaces with our transit system.

Councilman Newman spoke in support of the agreement and felt it was money well invested. He said this has been an identified need for a long time for good reason.

Ms. Ball responded to various questions from Council, some being, but are not limited to: what was the transit budget two years ago vs. today; has staff seeked input from the bus drivers and the current management as to ways to improve our routes; do we have the in-house

capability of performing this study and if so, why are we not utilizing that experience; and how much is the transit budget impacted by the federal change in legislation.

Mayor Bellamy said that she would like the consultant to look at the following, in that she has received several requests: Sunday service; extend services out Leicester Highway to the Land-of-Sky Regional Council; and request to service Eliada Homes, Wind Ridge and the senior development on Compton Drive.

At the request of Mayor Bellamy, City Manager Jackson said that at the June 17, 2008, worksession, City staff will have detailed information for Council regarding the transit budget - prior years and what is being proposed this year.

Councilwoman Cape moved for the adoption of Resolution No. 08-120. This motion was seconded by Councilwoman Jones and carried on a 6-1 vote, with Councilman Mumpower voting "no."

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F. RESOLUTION NO. 08-121 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT WITH BROWN AND CALDWELL FOR THE LOWER ROSS CREEK WATERSHED STORMWATER ENGINEERING ANALYSIS –PHASE I

Summary: The consideration of a resolution authorizing the City Manager to sign a contract with Brown and Caldwell for the Lower Ross Creek Watershed Stormwater Engineering Analysis – Phase 1 surveying in the amount of $110,000 with a 15% contingency ($16,500).

In December 2004, City Council adopted a Stormwater Utility. As part of the budget, City Council endorsed a program for the expenditure of the funds. Of the approximate $2 million of expected revenue, $200,000 per year was programmed to prepare stormwater engineering analysis for watersheds.

Staff prepared a Request for Qualifications in the summer of 2006. Ten proposals were received. Based on qualifications, staff along with citizen input selected Brown and Caldwell to perform this work.

The total cost to complete the entire Ross Creek Watershed was $400,000. At that time, we only had $200,000 available to perform the work. We decided to complete the study for the upper portion of the watershed. That study has been completed. We are now moving forward with the study for Lower Ross Creek.

We have funds in Fiscal Year 2008 Stormwater Utility Budget to complete the first phase of the study which includes the survey work. We will proceed with the engineering analysis after the first phase is complete.

Ross Creek is listed on the State 303 D list as an impaired stream. This means that this stream has been identified as having poor water quality.

Staff has developed a question and answer format to help Council and the public understand the components of a Stormwater Engineering Analysis.

> What is a Stormwater Engineering Analysis? A stormwater plan is a detailed engineering study that evaluates the stormwater drainage system in a watershed. In order to complete the study, the consultant must prepare an inventory of the drainage system. A hydraulic model is developed to analysis the capacity of the system. The model will indicate which pipes, ditches and/or streams need repair and in what priority.

The study also evaluates water quality concerns such as stream bank erosion, hazardous materials, etc.

What are the goals of a Stormwater Engineering Analysis? The goals of completing this study include the following:

- ✓ Developing a capital improvement program that evaluates upstream and downstream impacts of improvements;
- ✓ Prioritizing the storm drainage needs within the watershed;
- ✓ Developing a hydraulic model that can be used to determine improvements that need to be made as part of new development; and,
- ✓ Assisting in the justification for grant monies.

What are the deliverables of a Stormwater Engineering Analysis? The deliverables of this study include:

1. Detailed GIS Inventory of the Storm Drainage System in the watershed;
2. Hydraulic Model of the Watershed;
3. Capital Improvement Program of water quality and water quantity needs; and,
4. Detailed cost estimates for the improvements.

How do we prioritize what Watersheds get done in what order? Watersheds are prioritized based on flooding, funding opportunities, opportunity to impact development and water quality concerns.

Staff acknowledges that the cost of these studies is a significant investment. However, this information allows us to make better decisions in the future. Specifically, it provides a factual and analytical basis for prioritizing capital investments. Implementing projects based on engineering data will allow us to reduce the threat to property and lives.

This action complies with the City Council Strategic Operating Plan in the area of sustainability in that it helps to develop a long-term plan to address the City's aging infrastructure.

This action is the first step in completing the Lower Ross Creek Stormwater Master Plan.

Pros:

- Completing the engineering analysis will allow us to make better decisions on how to prioritize capital improvement projects.
- Data from this study will allow the development community to determine the impact of their development on upstream and downstream property owners.
- The City will have a detailed inventory of the storm drainage system.

Con:

- The cost associated with completing the work is significant. The engineering analysis must be completed by engineers that specialize in hydrology and hydraulics.

The cost of this project including the contingency is budgeted in the Fiscal Year 2008 Stormwater Budget.

City staff recommends City Council authorize the City Manager to sign a contract with Brown and Caldwell for the Lower Ross Creek Watershed Stormwater Engineering Analysis – Phase 1 surveying in the amount of $110,000 with a 15% contingency ($16,500).

Councilman Mumpower raised the question of continued investment and planning over activity, execution and action.

Councilwoman Jones moved for the adoption of Resolution No. 08-121. This motion was seconded by Councilwoman Cape and carried on a 5-2 vote, with Councilman Mumpower and Councilman Russell voting "no."

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G. RESOLUTION NO. 08-122 - RESOLUTION AUTHORIZING EXECUTION OF A $5 MILLION INSTALLMENT PURCHASE FINANCING CONTRACT FOR SIX FIRE TRUCKS, TWO SANITATION TRUCKS AND TECHNOLOGY ASSOCIATED WITH THE REPLACEMENT OF THE CITY'S ENTERPRISE-WIDE INFORMATION SYSTEM

Summary: The consideration of a resolution authorizing execution of a $5.0 million installment purchase financing contract for six fire trucks, two sanitation trucks and technology associated with the replacement of the city's enterprise-wide information system; and a budget amendment, in the amount of $660,600, to support the contract.

The current Capital Improvement Program (CIP) includes $3.0 million previously appropriated by City Council to finance the acquisition of six fire trucks and two large sanitation vehicles. The CIP also includes an estimate of $1.3 million to replace the enterprise-wide information system. As the City's needs analysis proceeded over a course of many months and the resulting RFP was provided to vendors, bids that were inclusive of our total system requirements ranged from $1.83 million to $3.14 million. Consequently, staff recommends increasing the information system replacement budget by $660,600, bringing it to a total of $2.0 million. Approval of the budget amendment will help us acquire a system that meets the city's basic technology needs. A breakdown of the items to be financed is provided as an attachment.

To finance the acquisition of the aforementioned $5.0 million vehicle and technology package, the Finance Department sought proposals from 10 local and regional banks. Seven proposals were received, the best of which was submitted by Regions Bank at a bank qualified interest rate of 2.49% per annum for a term of 4 years and 11 months.

The proposed resolution and budget amendment authorizes an installment purchase contract between the City of Asheville and Regions Bank for fire trucks, other large vehicles and an enterprise-wide information system; it also provides for other matters related to closing the loan with the bank. Upon approval of this resolution and budget amendment, staff will begin the process for closing the loan with the Regions bank. We anticipate the closing to take place between June 15 and June 20.

Pros:

- The resolution executes plans already approved in current CIP.
- The budget amendment provides for basic technology needs.

Cons:

- None noted.

Regarding the fiscal impact, the additional $600,000 needed for technology is offset by $600,000 in additional installment purchase proceeds. The actual fiscal impact to the city is the additional debt service costs associated with $600,000, estimated at approximately $134,000 annually. This additional cost, however, has been absorbed due to lower than anticipated interest rates.

City staff recommends City Council adopt the resolution and budget amendment authorizing the City Manager to execute an installment purchase contract and closing process with Regions Bank for the acquisition of vehicles and technology.

Information Technology Director Jonathan Feldman responded to various questions from Councilman Mumpower, some being, but are not limited to: why should the City spend $2 Million on an information system; what are the benefits of the new information system; how will the new information system save the City money; how often does the system need to be replaced and why; what will we get as a return on our investment; and will any staff be associated with this.

When Mayor Bellamy asked if this would have any impact on public safety, Mr. Feldman said that it will take the officers less time to complete paperwork, less redundancy and more time spent on the work they are supposed to do.

In response to Mayor Bellamy, City Manager Jackson said that we did reach out to the Town of Weaverville regarding this installment purchase financing contract for the fire trucks.

Councilman Mumpower moved for the adoption of Resolution No. 08-122. This motion was seconded by Vice-Mayor Davis and carried unanimously.

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H. **ORDINANCE NO. 3626 - BUDGET AMENDMENT TO SUPPORT THE PURCHASE FINANCING CONTRACT FOR SIX FIRE TRUCKS, TWO SANITATION TRUCKS AND TECHNOLOGY ASSOCIATED WITH THE REPLACEMENT OF THE CITY'S ENTERPRISE-WIDE INFORMATION SYSTEM**

Summary: See Consent Agenda Item "G" above.

Councilwoman Cape moved for the adoption of Ordinance No. 3626. This motion was seconded by Councilwoman Jones and carried unanimously.

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III. PRESENTATIONS & REPORTS:

IV. PUBLIC HEARINGS:

A. **PUBLIC HEARING TO CONSIDER THE ADOPTION OF THE 2008-09 ANNUAL OPERATING BUDGET**

Mayor Bellamy opened the public hearing at 5:40 p.m.

Budget Director Tony McDowell said that this is a public hearing to consider the adoption of the 2008-09 Annual Operating Budget. This public hearing was advertised on May 30 and June 6, 2008.

The Fiscal 2008-09 Annual Operating Budget was presented to City Council on May 13, 2008. In accordance with the North Carolina Local Government Budget and Fiscal Control Act, a summary of the Budget along with a notice of the Public Hearing was published on May 30, 2008, and June 6, 2008. Adoption of the Budget Ordinance is scheduled for June 24, 2008, at the regularly scheduled City Council meeting.

The Fiscal Year 2008-09 Annual Operating Budget is balanced with an Ad Valorem tax rate of $0.42 per $100 of assessed value. All essential City services are continued in the Proposed Budget.

A copy of the Budget is available for public inspection in the City Clerk's office. In accordance with the North Carolina Local Government Budget and Fiscal Control Act, the Budget may be changed by City Council in any way before adoption. It may also be changed by budget amendment after adoption with the only exception being the Ad Valorem Tax rate, which can not be changed once adopted.

Staff recommends City Council conduct the public hearing on the City of Asheville Fiscal Year 2008-09 Annual Operating budget and include public input in considerations on the Budget.

Ms. Linda Giltz, representing the Greenway Commission, felt that the proposed budget falls short of representing the kind of significant progress and the development of greenways, parks and open spaces that the community and the citizens desire. She explained why they are concerned about the multi-year trend of under-investing in capital projects/assets. Regarding greenways, parks and open spaces, they appreciated Council's commitment to Reed Creek Greenway, Overlook Park and the Haw Creek Park acquisition. Beyond those, there is only a very modest commitment to greenway projects. There is a need for more commitment to greenways and other bicycling and walking facilities. The current commitment doesn't seem sufficient to adequately address the needs for sidewalks in the community. She urged Council to continue with the research and planning for a general obligation bond referendum to provide significant funding to greenways and parks needs.

Mr. Joe Minicozzi, representing the Asheville Design Center, reviewed with Council drawings of a redesign of Patton Avenue connecting downtown to the River (20 acres between Hillcrest and downtown). He said the drawings cost $6,000 that they raised privately and he asked for a partnership of the Asheville Design Center with the City to see what they can do together. He will also be meeting with the County Commissioners. He said these 20 acres of land will be added back to our tax base.

Rev. Christopher Chiaronmonte felt Council should not add anything else to the budget.

Mr. David Robinson, President of the Each One Reach One Youth Coalition, Mr. Quentin Miller and Mr. Bennie Lake explained the Each One Reach One mentoring program and urged Council to allocate funding for this program

Pastor Spencer Hardaway, representing the Interdenominational Ministries Alliance, explained their community summer day camp for children and asked for Council's financial support to that program.

At 6:10 p.m., Mayor Bellamy closed the public hearing.

Upon inquiry of Councilman Newman, City Manager Jackson said that staff will be providing Council (per Council's direction on May 27) with information at the June 17 worksession on proposals that address gangs and/or job opportunities for young people, along with funding resources to support these initiatives.

Councilman Mumpower was concerned about side-stepping the budgetary process to fund the youth programs presented tonight, but would try to find ways to help in other ways.

In response to Councilwoman Cape, Councilwoman Jones said that on May 27 she was very specific in her support to revisit specific proposals already received either through the Housing & Community Development Committee or through the Outside Agency Committee requests that address the gang issues.

Mayor Bellamy noted that the Each One Reach One program was reviewed by the Housing and Community Development Committee, but due to limited resources was not funded. She noted there is a precedent set for amending the budget for programs.

Councilman Newman noted that Pastor Hardaway's proposal was submitted, but it was received after recommendations for allocations were already made.

Councilwoman Cape would like for the City to offer some guidance on how we can help prepare individuals to get into the next budget cycle.

Councilwoman Jones said that the YWCA has available spaces (at no cost) in a program for 9th and 10th graders that runs five days a week this summer. The groups of youth that the summer day camp is trying to reach is exactly who they want to serve. She hoped Pastor Hardaway would refer some youth to this program.

Mayor Bellamy said that on June 17, 2008, there will be an additional budget review, with adoption of the 2008-09 annual operating budget scheduled for June 24, 2008.

B, **PUBLIC HEARING REGARDING THE CITY'S INTENT TO WITHDRAW FROM A GRANT AGREEMENT WITH THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES LAND, WATER AND CONSERVATION FUND FOR CONSTRUCTION AT THE LAKE AREA AT AZALEA PARK**

RESOLUTION NO. 08-123 - RESOLUTION AUTHORIZING THE CITY MANAGER TO COMPLETE THE CITY OF ASHEVILLE'S WITHDRAWAL FROM A GRANT AGREEMENT FOR REIMBURSEMENT OF UP TO $91,423 WITH THE LAND, WATER AND CONSERVATION FUND FOR CONSTRUCTION AT THE LAKE AREA AT AZALEA PARK, MANAGED BY N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES

Mayor Bellamy opened the public hearing at 6:25 p.m.

Parks & Recreation Director Roderick Simmons said that this is the consideration to authorize the City Manager to complete the City of Asheville's withdrawal from a grant agreement for reimbursement of up to $91,423 with the Land, Water, and Conservation Fund for construction at the lake area at Azalea Park, managed by North Carolina Department of Environment and Natural Resources (DENR). This public hearing was advertised on May 30 and June 6, 2008.

The City of Asheville informed DENR of its intent to withdraw from the Land, Water, and Conservation Fund contract for Azalea Park LWCF #37-010201/DENR #PO7082 for $91,423. A public hearing is required to satisfy the requirements for withdrawal from the agreement. Upon completion of the public hearing, authorization to withdraw from the agreement may be completed by City Council. To date, no LWCF reimbursement payments have been requested or received by the City of Asheville for this project.

The original cost estimate for the LWCF project was $182,846 for a trail and wildlife interpretive area at lake, a river overlook, and a picnic shelter. Since the acceptance of the grant, no other funds have been budgeted to support the project. Additionally, the City of Asheville's capital priorities in the Parks, Recreation and Cultural Arts Department have changed and this project and the additional capital budget to support it is not a priority at this time nor will it be for a few more years.

The City is also in the process of developing a new Parks, Recreation and Cultural Arts Department master plan which will set the pace for capital projects for the next few years. The recommendations from the master plan will determine how the build out of Azalea Park fits into the overall vision.

The Azalea Park Land and Water Conservation Fund construction ties in with the Strategic Operating Plan by addressing the Growth, Development & Land Use Priority area; supporting multi-modal programs and the Natural and Built Environment Priority; develop programs to protect key environmental features.

This action complies with the Azalea Park Master Plan by recognizing cost constraints related to the project.

Pros:

- Withdrawal from the agreement will save the City a minimum of $91,423 to satisfy the required matching funds needed to receive the LWCF grant.
- Withdrawal from the agreement allows the City of Asheville to save construction costs related to the project that would otherwise be required by the Land and Water Conservation Fund to bring the project to a close.
- The City of Asheville will not incur maintenance costs for the proposed lake, trail, and picnic shelter.
- Withdrawing from the agreement allows the City of Asheville to focus on capital projects as recommended in the pending park master plan.

Con:

- Withdrawal from the agreement may negatively impact the City of Asheville's ability to secure Land and Water Conservation Fund grant agreements in the near term.

Regarding the fiscal impact, if the City of Asheville withdraws from the agreement, there will be no fiscal impact to the City of Asheville's budget. If the City of Asheville does not withdraw from the agreement, a minimum of $91,423 will need to be budgeted to meet the original cost estimate for the project and satisfy the matching requirement of the agreement.

City staff recommends City Council adopt a resolution authorizing the City Manager to withdraw from the North Carolina Department of Environment and Natural Resources Land, Water, and Conservation Fund contract for Azalea Park LWCF #37-010201/DENR #PO7082 for $91,423.

Mayor Bellamy closed the public hearing at 6:27 p.m.

In response to Vice-Mayor Davis, Mr. Simmons explained the different parts of Azalea Park and this will not have any impact on the private funds raised.

Mayor Bellamy noted that this is the second grant we are returning this year. She questioned how that will affect our future regarding grants. In response, Mr. Simmons said this is a federal grant and because we can show a clear plan on why we couldn't proceed, he didn't think it would have a negative impact on us for future grants.

Mayor Bellamy said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Mumpower moved for the adoption of Resolution No. 08-123. This motion was seconded by Councilman Russell and carried unanimously.

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C. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR THE PROJECT IDENTIFIED AS THE BUNCOMBE COUNTY

HUMAN SERVICES ADDITION AND PARKING GARAGE LOCATED AT 40 COXE AVENUE

ORDINANCE NO. 3627 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR THE PROJECT IDENTIFIED AS THE BUNCOMBE COUNTY HUMAN SERVICES ADDITION AND PARKING GARAGE LOCATED AT 40 COXE AVENUE

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 6:31 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that the Authorized Practice Committee of the North Carolina State Bar has issued an advisory opinion that appearing in a representative capacity for a party before a local governmental body in a quasi-judicial proceeding is the practice of law, especially with respect to such aspects of the hearing as examining or cross-examining witnesses, or advocating for legal conclusions or results. This does not prevent persons, including land use professionals, from presenting information or expressing opinions within their knowledge or area of expertise.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Alan Glines submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Glines said that this is the consideration of the issuance of a conditional use permit for the project identified as the Buncombe County Human Services addition and parking garage located at 40 Coxe Avenue, for a 48,000 sq. ft. addition to the existing building and a new 240,000 sq. ft. parking deck (Attachments to City Exhibit 3 - Location Map and Aerial Map).

He said that the *Asheville City Development Plan 2025* notes the need for structured parking in a variety of locations in the downtown area. Parking structures are encouraged because of their efficient use of land and improvement over surface parking lots. Garage structures can be less disruptive to the pedestrian environment than the same number of parking spaces provided on surface lots fronting on City streets. The Comprehensive plan and encourages parking structures to be wrapped in retail or office uses to activate and enhance the pedestrian environment at the sidewalk level. Buncombe County is locating the garage internal to the block with the Human Services addition providing a 'liner' building to shield the scale of the garage structure from Coxe Avenue. The *Comprehensive Parking Study* completed in 2008 notes that ample existing and additional parking spaces in this west-central area of downtown support the other parts of downtown to the north and east which have parking deficits based on use and demand.

City Council has recently adopted the following four goals: *sustainable, affordable, green and safe*. The office expansion and parking garage is sustainable because it is mixed-use, reinforces the downtown area as the center of government services, and counters sprawl. The project is green because it is situated across from the Asheville Transit Center and because it is located in the pedestrian friendly downtown environment. The above-ground garage will allow natural ventilation and natural lighting and the office building will be LEED certified. The goal of affordability may not directly apply here but affordable public parking may provide economic development support to local commercial and office uses. The project promotes safety because of the specific open design of the garage and the glass stair towers which make it transparent and visible. Safety of the surrounding downtown area is enhanced because the public garage creates energy and activity and supports the goal of a safer 24-hour downtown environment.

The Buncombe County Human Services Addition and Parking Garage is located at 40Coxe Avenue in the Central Business District (CBD). The site is the location of the existing 3 story 70,000 square feet Human Services building and a surface parking lot (Attachments to City Exhibit 3 - Views and Landscape Plan). The proposal includes expansion of the Human Services building and a new public parking garage (City Exhibit 4).

Human Services Expansion:

- The new wing of the Human Services Building will total 48,000 square feet
- The front façade will be on Coxe Avenue.
- The building is a contemporary design with five stories
- The main lobby and waiting area will have direct access from Coxe Avenue
- The plaza space next to the building provides access to the garage stair tower

Parking Garage:

- A new garage with 240,000 square feet and 650 spaces will be located behind the office wing.
- The garage is screened from view from Aston Street and Coxe Avenue in compliance with the UDO.
- Vehicular access will be from Sears Alley (also known as Second Street as noted on the plans)
- The parking garage is eight levels tall and will be 91 feet to the top of the stair tower as measured from Coxe Avenue and 76 feet to the same point measured at Buncombe Street at the rear of the site reflecting the natural change in grade
- The garage structure is framed with a contemporary open mesh material that will help finish the garage but still make it open to the air and light to reduce operating costs.

The area sidewalks will be improved to the CBD standard of ten feet along Coxe Avenue and will be improved along Sears Alley and Buncombe Street to 8 feet wide. Street trees will be provided along Coxe Avenue by the new addition and along Sears and Buncombe Streets as required by the Unified Development Ordinance (UDO). Along Aston Street and the area of Coxe Avenue along the existing building, the existing sidewalk is six feet wide and because it is too narrow for trees, staff is requesting that tree bulb-outs be provided as a substitute. Aston Street has existing on-street parking and the tree bulb-out spaces could be added in a "bookend" fashion. Even with the bulb-outs there will be a need for a modification from the UDO requirement for street trees from City Council because the specific number of trees (one per 40 feet) will not be met. Staff recommends approval of the modification request recognizing that existing infrastructure and on-street parking spaces makes compliance difficult.

The Downtown Commission reviewed the Buncombe County proposal at their May 9, 2008, meeting and after much discussion approved the design with two conditions. The commission felt that the expansion was a needed service and that the parking garage would benefit the downtown community. The commission felt that the clean and modern design is appropriate considering the nature of the use but recommended that the entrance to the garage

and the stair tower be enhanced with lighting to promote the use especially at night. Staff recommended that additional seating be provided for the plaza waiting area because it would be a benefit to the office and garage users and pedestrians using the area. The Downtown Commission also commented that the way-finding signage should be consistent to how other garages will be signed in the downtown area. The Downtown Commission approved the plan with the two following conditions: (1) That additional color be added through various lighting options such as LED lighting to the garage façade and stair tower primarily along Coxe Avenue to maintain an eclectic and vital downtown; and (2) Additional benches be added to the plaza area to increase available public places downtown. Based on comments from the Downtown Commission, the garage plans were revised to have heightened lighting around the main entrance areas, stairs and perimeter edges to promote way-finding and safety. In addition several benches have been added to the plan for the plaza area that City Council is now considering.

The equipment used to operate the garage will be compatible with the equipment recently selected by the City of Asheville which could offer long-term operating efficiencies for both Buncombe County and the City of Asheville. The office building will be LEED certified; and the parking garage with its open design will rely on natural ventilation and natural lighting during daytime hours. In addition, LED lighting will be used for the garage which is more energy efficient than incandescent lighting sources. Solar shades will be used along the south side of the office building and efficient Low E glass will be used through out the building.

This project is a conditional use permit (CUP) because it is a governmental use located in the CBD and not because of the scale of the garage. In early 2008, City Council approved a wording amendment to the definition of gross floor area that excludes floor area in parking structures/ decks from the definition of gross floor area since they provide a public benefit and support needed infrastructure. In addition to the seven standards used to evaluate CUP projects, three additional standards are used to review governmental uses in the Central Business District and follow the seven findings.

Section 7-16-2(c) of the UDO states that Asheville City Council shall not approve the conditional use application and site plan unless and until it makes the following findings, based on the evidence and testimony received at the public hearing or otherwise appearing in the record of the case:

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   The structures will be designed and reviewed to meet state building codes. The use is an expansion of needed community services and should promote public health and safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
   The proposal is located on an infill site in the center of the CBD and is an expansion of an existing use. The office expansion is located directly along Coxe Avenue noted as a key pedestrian street in the adopted 2025 plan. The orientation of the office use in front of the garage structure at the rear is consistent with UDO requirements. The moderate height of the garage should not over shadow the church buildings or other structures located in the vicinity of the parcel.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
   The proposal is an expansion of the existing Human Services Building and the use is a crucial service for the community. The parking garage with its public parking is expected to add value to the surrounding area by supporting nearby businesses and will be a

benefit to downtown visitors during the daytime and after hours while promoting a safe 24-hour downtown area.

4. **That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
Parking garages are considered by some to be an unfortunate necessity in the downtown area. This design however, will place the Human Services building at the front of the parcel along Coxe Avenue with the main part of the garage located at the rear. The entrance to the garage will be well marked for easy way-finding with signage consistent with the community way-finding program. The structures: five stories for the office use and eight levels for the garage, will not overwhelm the surrounding uses and will be in harmony with the scale, bulk, coverage, density and character of the surrounding area.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
The need for additional structured parking has been identified and discussed for some time in the downtown area. Buncombe County will make the parking garage available for public use in the form of day/ visitor parking, monthly pass-holders and evening parking. The Center City plan notes that parking garages use the land more efficiently than surface lots and are less disruptive of the pedestrian environment when they are wrapped with a habitable space. The current proposal is designed with the Human Services Building expansion along Coxe Avenue; a key pedestrian street. The design of the garage structure using transparent screening material with an open-walled plan of suitable scale to avoid overwhelming nearby structures is recommended in the comprehensive plan. The *Comprehensive Parking Study* notes that existing and proposed parking spaces in this area of downtown support other areas of downtown to the north and east which have a deficit of parking spaces available.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
The proposal is located in the downtown Central Business District in an area that has adequate utility infrastructure and proper access to fire and police protection as well as other services normal for a commercial building and public garage.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
A traffic impact study was prepared, reviewed, and approved for the subject project because the anticipated traffic should exceed 100 vehicles per hour during the morning and afternoon commuting peak hours. It should be noted that the traffic impact study was prepared based on a parking deck with 850 spaces but the actual size has now been reduced to 650 spaces. Since the anticipated traffic for the reduced size will be less, a revised traffic impact study was not required. The area of influence included eight nearby intersections and it was determined that the proposed project should not place an undue burden on the surrounding street network. In order to facilitate traffic flow in the immediate area, Buncombe Street and Sears Alley should be converted from one-way operation to two-way operation. This change would eliminate 20 existing parallel on-street parking spaces; however, public parking spaces in the new parking deck would offset the loss. Other suggested mitigation improvements included in the traffic impact study will be considered as the project moves forward and will be implemented if the need arises.

Section 7-16-2(d)(13) Provides several additional conditional use findings that government uses located in the CBD must meet:

- **The proposed location for the use or building will not unduly or unreasonably restrict the availability of key land for private development.**
  The garage is appropriately located on property already owned by Buncombe County and should allow other private parcels in the CBD to be available for redevelopment with greater intensity because public infrastructure investment in public parking supports private sector growth. The *Comprehensive Parking Study* completed in 2008 noted that this area of downtown is in a central location and has a parking surplus that provides support to other areas of downtown that have a parking deficit based on use and demand.

- **No alternative location for the building or use exists within areas previously developed for government buildings and/ or uses.**
  This proposal is a redevelopment site on an existing surface lot and an expansion of a critical community service already located on the site. This conditional finding is written to encourage location of such uses on exactly this kind of site. The placement of the garage will add value and efficiency to government and private sector uses in the area.

- **If a new structure is proposed in the areas covered by the design review guidelines, the ability of the structure's design to comply with the downtown design review guidelines for new construction shall be a factor in the review of the request. New structures in these areas must substantially comply with the design guidelines as determined by the Asheville City Council.**
  The design for the garage and the new wing of the Human Services Building was reviewed and approved by the Downtown Commission at their May 9, 2008 meeting. The garage structure will be shielded by the Human Services addition from Coxe Avenue and will provide a utilitarian façade along Buncombe Street and Sears Alley in accordance with requirements found in the UDO. The existing Human Services building and the new addition covers the parking structure from Aston Street and Coxe Avenue. The new Human Services wing at five stories was reviewed for compliance with the Downtown Asheville Design Review Guidelines and the UDO and was found to be compliant. The drawings and elevations and site plan will become part of the regulating documents if the project is approved.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

This conditional use project was recommended for approval by a unanimous vote by the Downtown Commission. At the Technical Review Committee (TRC) meeting, no one besides the development team spoke regarding the project during the meeting.

Pros:

- A needed community service function is expanding
- Public parking is expanding in the downtown area
- The office building will be LEED certified and the garage will provide certain more efficient elements by design
- The parking garage will be an active 24-hour use which helps with public safety for downtown
- Public restrooms will be provided in the garage
- Transit Center is located across the street for easy access to the expanded human services building

Cons:

- Block is dominated by a single large use which is typical of government uses and does not support a mix of uses

- The City and County are not in a shared-agreement with the garage use and operation which could be more efficient

The Downtown Commission reviewed the project and building design and voted to approve the proposal at their May 9, 2008, meeting with two conditions that were summarized in the staff report. Staff recommends approval of the proposal as presented incorporating those two items with outstanding TRC comments added as conditions of approval.

After rebuttal, Mayor Bellamy closed the public hearing at 6:37 p.m.

Councilwoman Jones thanked the County for meeting one of our biggest downtown needs with the parking garage.

In response to Councilwoman Jones, Assistant County Manager John Creighton said that a parking study performed two years ago showed there was about a 1,100 space need in that area. They tried to negotiate with an adjoining property owner to make the deck larger, but to keep it at the highest level of service, they were limited to the eight stories with 650 parking spaces. He said that at this time they do not have the breakdown of employee parking, monthly rentals, public parking etc.

In response to Councilwoman Jones, Mr. Creighton said that there has been some preliminary discussions about operations with City staff and at this point they are willing to entertain a proposal from the City to operate this deck and the College Street deck.

City Manager Jackson also noted that the City is acquiring compatible software systems with the County for the management of the spaces.

Vice-Mayor Davis was appreciative of not only parking in that area, but public restrooms as well.

Mr. Creighton responded to various questions from Councilman Russell, some being, but are not limited to: will Second Street remain open during construction; will there be alternative ways for people to get in and out of the former First Union parking lot; is Buncombe Street turning into a two-way street; and what is the timing for groundbreaking.

Mayor Bellamy thanked Mr. Creighton for working with City staff in a collaborative nature. We appreciate the County looking at this need and addressing it.

Based on information provided in the staff report, Councilman Mumpower moved to approve the Conditional Use Permit adopting the proposed master plan for the Human Services Addition and Buncombe County Garage with the requested landscape modification and subject to the conditions recommended by City staff and the following conditions: (1) That additional color be added through various lighting options such as LED lighting to the garage façade and stair tower primarily along Coxe Avenue to maintain an eclectic and vital downtown; (2) Additional benches be added to the plaza area to increase available public places downtown; (3) The project shall comply with all conditions outlined in the TRC staff report; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; and (5) This project will undergo final review by the TRC prior to issuance of any required permits. This motion was seconded by Councilwoman Jones and carried unanimously.

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Closed Session

At 6:46 p.m., Councilman Newman moved to go into closed session in order to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: Estate of Mark Wayne Thompson, Jeffrey Lawrence Brown, City of Asheville, Brian Hogan, John Coker, William Cogburn, Curtis Jones, Timothy Splain, Police Chief William Hogan, James Jackson and Estate of John Reynolds. The statutory authorization is contained in N.C. Gen. Stat. sec. 143-311 (a) (3). This motion was seconded by Councilman Newman and carried unanimously

At 7:23 p.m., Vice-Mayor Davis moved to come out of closed session. This motion was seconded by Councilwoman Jones and carried unanimously.

V. UNFINISHED BUSINESS:

VI. NEW BUSINESS:

A. CONSIDERATION OF APPLICATION TO THE FEDERAL RAILROAD ADMINISTRATION FOR INTENT TO FORM RAILROAD QUIET ZONES

Director of Transportation and Engineering Cathy Ball said that this report outlines a process to develop a railroad quiet zone as proposed by RiverLink.

The Federal Railroad Administration (FRA) regulates establishment of quiet zones through the train horn rule, adopted in 2005 and amended in 2007. A quiet zone must be at least ½ mile long, and each public at-grade crossing must have at least crossing gates and flashing lights. Each private crossing that is accessible to the public must have measures as recommended by a diagnostic review team. Costs of design and installation of additional safety measures required to establish the quiet zone are normally paid by the entity requesting the quiet zone. The North Carolina Department of Transportation (NCDOT) might be able to assist with costs if closing one or more at-grade crossings were a part of the project. If a quiet zone were established at the request of the city, certain liability would transfer from the railroad to the city. There are no quiet zones on Norfolk Southern tracks in North Carolina.

She then reviewed the process for creating a railroad quiet zone.

The first step in this process is to develop a feasibility study. If the feasibility study indicates the conditions are favorable and in compliance with the FRA thresholds, a planning and engineering study is completed. The final step in the process is implementation.

If a quiet zone is implemented the train personnel are still allowed to sound horns in the event of an emergency, in support of roadway workers safety or in case of malfunctions of crossing warning devices.

Regarding the Strategic Operating Plan, the project can support the areas of housing opportunities, sense of place, and growth, development and land use. It can be used to make the area suitable for building affordable housing with federal funds, encourage riverfront redevelopment, and promote infill growth.

The railroad quiet zone is aligned with the Wilma Dykeman Riverway Plan, particularly the following elements: Balance, Health, and Environment.

Pro:

- Supports Council goals and vision

Cons:

- Expensive to implement

- Exposes city to new liability
- Requires ongoing commitment for enforcement and maintenance of signs
- Increases annual at-grade crossing maintenance costs

Regarding the fiscal impact, the process for implementing quiet zones would involve a feasibility analysis phase, a planning and engineering phase and a capital improvement phase. RiverLink proposes a feasibility analysis be undertaken. RiverLink has agreed to pay the $2,800 to make this happen. This will allow us to determine if a quiet zone is practical in the Riverway. The estimated cost for planning, engineering and capital improvements are $3-4 million for implementation, approximately $10,000 in additional annual crossing maintenance payments, and ongoing monitoring and enforcement costs would be incurred after construction. The Council action requested by RiverLink does not commit the City of Asheville to any expense.

City staff requests City Council consider a proposal from RiverLink to perform a feasibility analysis for railroad quiet zones and send a letter of intent to the FRA indicating a desire to evaluate the opportunity to create this zone along the river.

Ms. Karen Cragnolin, Director of RiverLink, said that after working with people who are developing (and would like to develop) property along the River she felt that this would be one of the tools to develop the River. She asked Council to take the step of the feasibility study and RiverLink is willing to pay the $2,800, which will commit the City to nothing. When a federal railroad representative toured the area in February, he felt some of the crossings were so outdated that the railroad would probably spend their own money to upgrade them. The Railroad Quiet Zone won't change the number of trains or change the cargo or change the schedule. It will only make the crossings safer and make us eligible to receive funds and perhaps be a boom to some of the development that would like to occur along the River.

Councilwoman Cape recalled Mayor Bellamy talking with the County and others about forming a River District Commission to look at development along the River. She wondered if this is premature before the Commission can take a holistic view and give input. She would need more information about this requested action.

Mayor Bellamy said the meeting that was held was a preliminary discussion from different stakeholders across the City and County to look at assisting in the efforts that have been going forward for the implementation of the Wilma Dykeman River Plan. She too felt this was premature and wasn't sure if this would be the best tool in the toolbox to develop along the River.

Councilman Russell agreed that additional information was needed as the cons pointed out in the presentation are serious.

Councilman Newman raised questions about the feasibility and its process. Regarding the $3-4 million to implement, he felt the City had more pressing infrastructure needs in our community, along with the need for sidewalks, recreation centers, etc.

In response to Councilwoman Jones, Ms. Ball said that a study was done in 2005 and they drove to every railroad crossing location. The measures that we have in place at each location meets the minimum requirements. Due to the changes in technology through the years, they could be made safer. Basically the safety bars are old and don't include the newest innovative ways of handling crossings.

In response to Councilwoman Cape, Ms. Ball explained why the City would be exposed to new liability with the implementation of quiet zones.

Mr. Gene Robinson, Conductor with Norfolk Southern Railroad, said that it is his personal experience that every time a train collides with a car, the person says the engineer wasn't blowing his horn. He explained that the train horn is the only means of communication that a train crew

has for the public. He said it is a federal law that all people will yield the right-of-way to trains at all crossings, but people don't abide by that law. Seventy-two gates were replaced last year.

Mayor Bellamy said that the process being undertaken with the City, County and stakeholders is not defined yet and she didn't want people to think that this is going to happen soon. It is a process which they are trying to build support of the City working with the County and the community.

Vice-Mayor Davis noted that some neighborhoods have legitimate noise concerns; however, regarding this feasibility study, he felt it raises expectations of something happening that the City is not in a position to do. He appreciated the idea being brought forward, but felt the action of looking at Railroad Quiet Zones is premature.

B. RESOLUTION NO. 08-124 - RESOLUTION OBJECTING TO SALE OF LAND IN THE CITY-COUNTY PLAZA AREA BY BUNCOMBE COUNTY

City Attorney Oast said this is a resolution objecting to the sale of certain property in the City-County Plaza area. It is not a vote on any particular project or development proposal. Although there has been a proposal submitted, that has been withdrawn and nothing has been received. In the course of discussions surrounding this issue and some previous issues too, it was general knowledge that the City and County have historically cooperated in the operation and management of the area in front of the City Building and Courthouse, known as City-County Plaza. This cooperation has been supported by the following number of different documents, including legislation in 1927, agreements in 1928, and some cross-deeds in 1929 that put the ownership of some of that property into a tenants in common. In the 1960's and 1970's it was also cooperation of the western end of City-County Plaza in the redevelopment of the area. The City and County both had representatives on the Redevelopment Commission who developed a plan and implemented that plan to make the area look like what it did for many years until the current construction project. And then again in 2001 the City and County entered into an agreement with the Pack Square Conservancy regarding the renovation of Pack Square. In 2002 or 2003 there was a proposal to construct a building on College Street, with a conditional use permit, and one of the conditions of that conditional use permit was the County be given some degree of approval authority over the proposal. There is a history of cooperation between the City and the County in the operation and management of that area. The proposed resolution is one where Council recites part of that history but objects to the County selling part of that land, which was covered by many of these agreements, without consulting the City. It is an unfortunate thing that happened, but that is where we are. The proposed resolution expresses Council's objection.

He then read the following substance of the resolution: (1) The City Council objects to the sale by Buncombe County of the Subject Property as described above, and further objects to the conveyance by Buncombe County of any property located in the City-County Plaza / Pack Square Area without consultation with the City; and (2) The City Council respectfully requests that the Board of Commissioners of Buncombe County undertake to re-acquire the Subject Property or otherwise ensure that it remains part of City-County Plaza and open to and available for the use and enjoyment of the public in perpetuity."

Councilman Mumpower moved for the adoption of Resolution No. 08-124. This motion was seconded by Councilman Newman.

Mayor Bellamy stressed that the City of Asheville and this Council had noting to do with the land being sold. She asked the public to focus their comments on the resolution only as there is no proposal to consider.

Interim Planning & Development Director Shannon Tuch explained that plans were submitted for consideration to be set on the Technical Review Committee agenda. City staff

deemed the application incomplete because they did not have all the information they would normally require for such an application. The property owner came in and picked up the plans. At this time we have no application to consider.

Councilman Mumpower noted that the City Council is doing what we have the power to do - pass a resolution objecting to the sale of land by Buncombe County.

The following individuals spoke in support of the resolution objecting to the sale of land in the City-County Plaza area by Buncombe County for various reasons, some being, but are not limited to: the condominiums will take away from the veterans memorial that will be placed in the plaza area; the Parkside land sale should be rescinded at no additional costs to the public and the public space be reserved for all citizens; the Parkside project came before the Pack Square Conservancy for design review in November of 2007 and at that time the Board voted unanimously, as a result of the height and the view corridor, to deny the project in that it failed to comply with the Design Review Guidelines; suggestion that the City pursue an exchange of land so that the developer would move the building southward; there are many businesses in the area that are affected by the time it is taking to get this matter resolved; request of the Pack Square donors to get some type of conservation easement; request to petition the US Congress for redress of grievance against Buncombe County for the sale of public property to a private person without due process of law; suggestion of an amendment to the Unified Development Ordinance regarding Council review of the delegation of authority to staff on Level I and Level II projects if a development appears to be controversial and that Council reserve the right to make that decision; citizens do not want a condominium project in the park which holds many festivals; the project will obstruct the view of City Hall; project consideration is premature and should wait until the Downtown Master Plan is completed; Council should do what they have to save the park which is one of the most valuable resources the community has; Buncombe County was going to sell that land for development long before the Parkside proposal; update the Memorandum of Understanding with the Pack Square Conservancy regarding post-construction pieces of the park; the loss of a park, trees and public area is a human health issue; suggestion that the City and County jointly consider a zoning designation of "PP" for permanent park land that is never to be sold or developed; after adoption of this resolution, the City should follow-up with the threat of a lawsuit against Buncombe County; the park is a sacred place people gather to celebrate; and City and County should stand firm, along with private people pitching in to help, in buying the property back:

Mr. Fred English, east Asheville resident
A representative from the Buncombe County Chapter of the WNC Alliance
Ms. Carol King, Chair of the Pack Square Conservancy Board of Trustees
Mr. Gene Hampton, founder of NC Citizens for Quality Government - Buncombe County
Mr. Jake Quinn, north Asheville resident
Ms. Rachel Larson, Asheville resident
Ms. Myers, west Asheville resident
Mr. Barry Summers (presented Council with e-mails and materials)
Mr. Kelly Miller, member of the Pack Square Conservancy
Mr. James Sheeler, west Asheville resident
Ms. ClareHanrahan, Asheville resident
Mr. Dylan Rhew
Ms. Dixie Deerman
Mr. Steve Rasmussen
Rev. Christopher Chiaronmonte
Mr. Richard Gerber

Mr. John Cort, architect in Asheville, felt any person who complies with the City's ordinances and has legal title to the land should be entitled to proceed.

Mr. Tom Israel, who is involved with the Parkside project, appreciated everyone's opinion if they are based on fact. To suggest the sale is illegal or strong arm tactics involved are opinions only and not based on fact. He then reviewed with Council the details of the Parkside Project, stating the many benefits to the City, the community and to the park.

Councilman Mumpower said we are trying to uphold a fair, honest process. The resolution proposed states that the City feels it's wrong to use Pack property to support this development.

Councilman Newman felt adoption of the proposed resolution is an appropriate step to take at this time. Most people in this community recognize that this property is part of our town square. There are some allegations that perhaps the transfer of the property was not legally permissible and there is a case being made in the judicial process to that affect. But even aside from that, it was not a sound decision and even if it was legally permissible, we would like to ask the parties involved to reconsider it. There has been so much public concern about the sale of the property itself that until that step is taken to get this piece of property itself back into the public domain it's hard to constructively start looking at other issues that come into play.

Councilwoman Cape would like for Council to look at the park property be put in a conservation easement. She would be open to talking with the County about a parks designation and/or a conservation easement.

Mayor Bellamy said that Chairman Ramsey has made a similar collaborative request and the issue will be brought up after this process.

The motion made by Councilman Mumpower and seconded by Councilman Newman carried unanimously.

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C. RESOLUTION NO. 08-125 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPROVE AN ADDITIONAL HOUSING TRUST FUND LOAN TO MOUNTAIN HOUSING OPPORTUNITIES FOR THE DEVELOPMENT KNOWN AS THE GLEN ROCK

At the request of Mayor Bellamy, Councilman Mumpower moved to excuse Mayor Bellamy from participating in this matter due to a conflict of interest. This motion was seconded by Councilman Newman and carried unanimously.

At this time, Mayor Bellamy handed the gavel over to Vice-Mayor Davis who conducted the meeting (Mayor Bellamy left the Chamber).

Community Development Analyst Randy Stallings said that this is the consideration of a resolution authorizing the City Manager to approve an additional Housing Trust Fund (HTF) loan in the amount of $500,000 to Mountain Housing Opportunities (MHO) for the development known as The Glen Rock.

In January 2007, Council approved a $500,000 HTF loan to MHO for the development of sixty (60) affordable rental units in its Glen Rock project at 362 Depot Street. MHO has requested an additional $500,000 to help meet a projected funding gap, which has arisen because of large increases in construction costs and a decreased price for tax credits. The maximum allowable funding under the current guidelines is $500,000 per project. The request for additional funding, if approved, will represent a total investment by the City of $1,549,076 ($1 million HTF and $549,076 in HOME funds).

If approved, the HTF loan amount per unit would increase from $8,333 to $16,667. This is well below the maximum of $30,000 per unit. The requested loan terms are 2% annual interest payments with principal deferred for 20 years. The current available balance in the Trust Fund is $561,667. The request was recommended for approval by the Housing and Community Development Committee on May 19, 2008. At the Committee's request, the Mayor's Task Force on Affordable Housing was consulted and has also recommended this departure from normal policy.

This action complies with the Strategic Operating Plan in that the project is supportive of the City's goal of providing safe and decent affordable housing units to the citizens of Asheville.

It also addresses the priorities of the Consolidated Strategic Housing & Community Development Plan by increasing the housing stock, providing affordable rental units, building high quality energy-efficient housing, and coordinating development with transportation and jobs.

Pros:

- Will enable development of 60 rental units which will remain affordable to families below 60% area median income for the full physical life of the buildings.
- MHO has a successful track record developing similar tax credit projects.
- Will be part of a larger mixed-use redevelopment plan on the site which will spur the redevelopment of the River Arts District and the Southside community, where MHO will be developing housing for homeownership
- Leverages almost $8,000,000 in outside funding

Cons:

- The size of the total loan represents a substantial departure from current policy and creates an unfavorable precedent for making large financial commitments to a single project.
- Could inhibit the Fund's ability to adequately support another tax credit project in 2009 and/or make it harder for small scale developers to gain access to the fund.

Funding for the Housing Trust Fund has been previously appropriated. Annual tax revenue impact is estimated at $18,000 for the affordable housing and $42,000 for the entire project.

Staff recommends adoption of a resolution authorizing the City Manager to approve the additional Housing Trust Fund loan for The Glen Rock development in the amount of $500,000.

Councilman Newman spoke in support of this resolution in that the Housing & Community Development Committee felt it was the most powerful way to encourage the things that the Housing Trust Fund was set up to do - to address the need for housing in the community.

Councilman Mumpower felt this was an attractive project but disagreed using federal month and the dramatic departure from our existing policy. He felt the City should be involved in affordable housing through our policies.

Councilwoman Cape spoke in support of this action in that this loan will be paid back in 20 years and during that time we will be generating revenue for our community from taxes.

Throughout discussion, Mr. Stallings responded to various questions/comments from Council, some being, but are not limited to: what is the annual appropriation to the Housing Trust Fund and how does the fund grow; how could this loan inhibit the trust fund's ability to support another project in 2009; what percentage of the trust fund goes to Mountain Housing Opportunities; and is the per unit funding to Mountain Housing Opportunities projects less than the average of other projects.

Councilwoman Jones spoke in support of this loan in that a lot of discussion has gone into this recommendation. This department from current policy has also been reviewed by the Mayor's Affordable Housing Task Force and they agreed that this would be an appropriate departure. She said that someone making $10/hr will be able to rent an apartment in this project and that renting is a launch pad for home ownership. She felt that Asheville has a good track record with the Housing Trust Fund by putting a lot of people in housing.

In response to Councilwoman Cape, Ms. Cindy Weeks, representing Mountain Housing Opportunities, said that this will allow Mountain Housing Opportunities to leverage approximately $8 Million of other dollars.

Councilman Newman said that everyone in Asheville pays federal taxes. We should not arbitrarily stop accepting any of the federal tax money coming back into our own community because that is unfair to the Asheville citizens.

In response to Councilwoman Jones, Community Development Director Charlotte Caplan said that since the Housing Trust Fund was established in 2001, there has not been a bad debt.

Vice-Mayor Davis said that we have seen Mountain Housing Opportunities take this type of financing to produce a tremendous model and he supported the action.

Vice-Mayor Davis said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Newman moved for the adoption of Resolution No. 08-125. This motion was seconded by Councilwoman Jones and carried on a 5-1 vote, with Councilman Mumpower voting "no" (Mayor Bellamy was excused from voting).

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At 9:28 p.m., Vice-Mayor Davis announced short recess.

At this time, Vice-Mayor Davis returned the gavel to Mayor Bellamy, who continued to preside over the meeting.

D. ORDINANCE NO. 3628 - BUDGET AMENDMENT TO INCREASE THE BUDGET FOR THE HEALTH CARE PROGRAM TO COVER COSTS IN THE CURRENT FISCAL YEAR THAT HAVE EXCEEDED ORIGINAL BUDGET ESTIMATES

Chief Financial Officer Ben Durant said that this is the consideration of a budget amendment to increase the budget for the Health Care Program by $1,875,000 to cover costs in the current fiscal year that have exceeded original budget estimates.

As discussed with City Council during the Quarterly Financial Updates, the City has experienced an increase in health care costs in the current fiscal year. This increase is the result of several high dollar claims amounts, as well as overall general inflation in health care costs that has exceeded the growth rates that the City has experienced in prior years. Between 2002 and 2006, the City's health care costs remained essentially flat, even though costs at the national level were increasing significantly. Much of the City's success in controlling costs during this time period was due to its nationally recognized wellness and disease management programs.

With costs remaining flat over this five-year time period, the City was able to build up reserves in the Health Care Program. As of June 30, 2007, the fund balance reserve for the Health Care Program was $3.47 million. Staff is recommending that Council appropriate $1.1 million from the Health Care Program's reserves to help cover the costs in the current fiscal year

that have exceeded budget. Staff works with a consultant each year to update the recommended reserve levels in the Health Care Program. Based on the most recent assessment, staff believes that this $1.1 million appropriation from the Health Care Program reserves will leave more than enough available in reserves to cover claims incurred but not reported, protect us against the volatility of the health care market, and provide a sufficient "rainy day" cushion. It should also be noted that the Health Care Program's fund balance is considered reserved by the City's auditors, and it cannot be used for other general expenses. Therefore, this fund balance appropriation will not affect the year-end unreserved fund balance projection that staff presented in the third Quarter Financial Update.

There are also several health-care related revenues, such as employee contributions and insurance recoveries, that will exceed the original budget estimates in the current fiscal year. Normally these revenues that come in over budget would go to help build reserves, but staff is recommending that Council appropriate this additional revenue, which will total $775,000, to help fund expenses in the current year. The total budget amendment amount that staff is recommending for Council adoption is $1,875,000.

Pro:

- Provides an adequate budget to cover projected Fiscal Year 2007-08 expenditures in the Health Care program.

Con:

- None.

Regarding the fiscal impact, this will reduce the Health Care Program reserves from $3.47 million to $2.37 million.

City staff recommends City Council approve the budget amendment to appropriate $1,875,000 to fund expenses in the Health Care Program.

Throughout discussion, Mr. Durant responded to various questions/comments from Council, some being, but are not limited to: are there any other purposes for the health care fund balance; is there an effort to build up the health care fund balance to help support any aspect of our coverage package; what is the model we have been duplicating from Winston-Salem; how does the health care fund balance get funded; what is our projection for the coming year;

In response to Mayor Bellamy's question regarding the City's plan to have 100% participation by employees in the Asheville Project, City Manager Jackson explained that we are continually looking at different disease patterns that would lend itself to the model. At this time we see significant potential in obesity and tobacco use. Mayor Bellamy said that she would look forward to seeing additional information as it moves forward.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilman Russell moved for the adoption of Ordinance No. 3628. This motion was seconded by Vice-Mayor Davis and carried unanimously.

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E. RESOLUTION NO. 08-126 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A PROFESSIONAL SERVICE AGREEMENT WITH FIRST TRANSIT INC. TO MANAGE THE OPERATION A OF THE ASHEVILLE TRANSIT SYSTEM

Director of Transportation and Engineering Cathy Ball said that this is the consideration of a resolution authorizing the City Manager to enter into a professional service agreement with First Transit, Inc. to manage the operation of Asheville Transit System (ATS).

North Carolina law prohibits municipalities from engaging in collective bargaining. Therefore, the City of Asheville must hire a Management Company to operate the transit system. The management company is a party to a 13 (c) Labor Agreement with the Amalgamated Transit Union Local 128 covering all hourly employees. A collective bargaining agreement between ATS's Management Company and the ATU Local 128 is in place until June 30, 2010.

She provided Council with the following background information: (1) legal concerns (a) union; (b) cannot collectively bargain; (c) cannot disenfranchise union; (e) Section 13-C of the Urban Mass Transportation Act of 1964; and (f) Management Company; (2) current contract with Professional Transit Management (PTM) expires June 30, 2008; and PTM – contractor for past six years.

She said the process is (1) law requires that we select the management company through a competitive process; (2) process (a) issue Request for Proposals – September 2007; (b) Received three proposals – October 2007; (i) Professional Transit Management; (ii) McDonald Transit Associates Inc.; and (iii) First Transit; (c) evaluated proposals – January through March 2008 (Transit Division staff transition); (d) held interviews – April through May 2008; and (e) selected management company – June 2008; (3) evaluation team; (4) followed procurement process outlined in the Request for Proposals; and (5) oversight from legal and purchasing staff.

The current contract with the management company, Professional Transit Management, expired on June 30, 2007, and was extended until June 30, 2008. After this date the City is required to have a new contract in place for management services. The City issued a Request for Proposals for the Management Company in September 2007. The RFP closed on October 12, 2008. Three proposals were received from the following firms:

- Professional Transit Management
- McDonald Transit Associates, Inc.
- First Transit, Inc.

The evaluation committee evaluated and scored the three proposals, and then interviewed and scored all the firms. The evaluation committee has recommended First Transit, Inc. provide management services to the City of Asheville.

The City will enter into a three-year contract with the management company that can be renewed for another two periods of two and one years after agreement between both parties. The project cost will be $135,200 for the first year with a increase of approximately 4% each year.

The management firm will furnish all management and supervisory services required and necessary for the efficient and economical operation of ATS services under the policies, standards and procedures established by the City of Asheville.

The management firm will provide a resident General Manager and a management support team who shall be responsible for the day to day operations of the ATS transit system and have supervisory experience in the following services:

- General transit operations and policies
- Labor relations, employment, and training
- Routing and scheduling
- OSHA regulations

- Office management
- Risk management, insurance, and claims
- Equipment and facility maintenance
- Stores and purchasing
- Finance and accounting
- Specialized services under the Americans with Disabilities Act
- Private enterprise contract management
- Provision of legal counsel in all legal affairs, suits, pleas, and litigation in which the provider has an interest

The management firm will also provide assistance to City staff with federal regulations, processes and reporting.

The benefits of First Transit include (1) enhanced customer service training and approach; (2) offer additional management training at no additional costs; (3) focus on safety and security; (4) proven track record reducing operational costs; (5) experience with alternative fuel/hybrid vehicles: (a) Lindsborg, Virginia – hybrid vehicles electric/diesel; and (b) Arlington, Virginia, Houston Texas, and Lowell, Massachusetts – CNG; (6) provide customer support staff at no additional costs; (7) compare ATS operation to peer cities through their network in a monthly basis; (8) Corporate Purchasing Agreements; (9) currently operate 240 transit systems in the United States; and (10) eight systems in North Carolina: Carteret County, Cary, Durham, Fayetteville, Greenville, NC State Raleigh, Rocky Mount and Whiteville.

Transition (1) begins July 1, 2008; (2) formal transition plan; (3) current general manager submitted non-compete letter; (4) all employees retain same pay and benefits excluding General Manager; (5) employees start with a clean slate; and (6) prior to July 1 – communication with union and staff (a) formal – with approval from the current management company; and (b) informal – without approval.

Staff has continued to update the Transit Commission on the status of this contract change. Staff has reported to them on the steps in the process and they have been supportive of the process we have used to select the management company.

This project is in alignment with the Strategic Plan adopted by City Council in that the contract with the management company can support the areas of environmental sustainability, promoting emission reductions through more efficient transit operations and use of funds.

The project complies with the City Development Plan – 2025, Transportation Goals and Strategies, as follows: Goal VI: Develop a transit system that is capable of meeting the needs of all residents of and visitors to the region.

Pro:

- The First Transit, Inc. will provide the management services required to keep the transit system functioning properly and efficiently, managing all the aspects related to the operation.

Con:

- None

The project cost will be $135,200 for the first year with increments of approximately 4% per year.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into a professional service agreement with First Transit to manage the operation of the Asheville Transit System.

Staff recommendation is to approve the contract with First Transit for transit management.

Mr. Mike Fryar felt that City staff is not knowledgeable about transit issues and urged Council to keep Mr. Lonnie Blair (who is General Manager of Professional Transit Management) as General Manager

Councilwoman Cape felt that the City has an obligation to contract in the most equitable and fair manner. She is supportive of staff's recommendation which will give us the opportunity to take a fresh look at the transit system.

In response to Councilman Mumpower, Ms. Ball said that the following letter dated March 27, 2007, from Mr. Blair (which she understands is not uncommon) to the President of Professional Transit Management reads: "Thank you for selecting me to continue serving as Professional Transit Management's (PTM's) General Manager candidate for Asheville Transit. I am committed to serving Asheville Transit as a PTM employee only. I am not knowingly or willingly included in any other company's proposal for this project, nor will I agree to be included. I look forward to continuing to work with PTM and Asheville Transit in this role."

Vice-Mayor Davis noted that Mr. Blair has done a great job as General Manager and he hoped the new management company would give consideration to Mr. Blair's experience and knowledge.

Ms. Ball said that she spoke with First Transit and since City staff felt Mr. Blair is such a good resource and an outstanding person in the community, they indicated that Mr. Blair could potentially help in some kind of transitional role up to a month. She said the City does recognize Mr. Blair's commitment to his organization, through the management company, and his willingness to work with the City.

Councilman Russell hoped the management company would consistently look for ways to be more cost effective and efficient.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Newman moved for the adoption of Resolution No. 08-126. This motion was seconded by Councilwoman Jones and carried unanimously.

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VII. OTHER BUSINESS:

A. REPORT ON SOFA EXPRESS SNIPE SIGNS

City Attorney Oast said that in February of this year, City planning staff received information that the business known as Sofa Express was in bankruptcy and would be conducting a sale to liquidate its assets. This sale was to be conducted at Sofa Express' regional retail outlets, including its South Tunnel Road location.

Sofa Express sought to advertise this sale by way of an extensive sign campaign. When asked by the Planning staff about their proposed temporary sign package, which appeared not to comply with our sign code, Sofa Express representatives asserted that the sale was being conducted under orders from the federal bankruptcy court, and that the order pre-empted local sign codes. At this time, it appeared that the advertising was to be confined to the store

premises. A copy of the order was produced; and, on its face, the order appeared to pre-empt local codes.

Sofa Express was a national or large regional operation with multiple locations. They were represented in the bankruptcy proceeding by a law firm from New York City; law firms from Atlanta and Tennessee were also involved. The New York attorney for Sofa Express was contacted with respect to the snipe signs, and was provided with a copy of the ordinance. He asserted that the bankruptcy court's order pre-empted the City's codes and directed our attention to certain provisions of the order, including the following (emphasis added):

> 4. The Debtor and the Agent be, and they hereby are, authorized to take such actions necessary and appropriate to implement the Agreement and to conduct the Sales without the necessity of a further order of this Court as provided by the Agreement, including, but not limited to, advertising the Sale through the posting of signs (including the use of exterior banners in non-enclosed malls), use of sign walkers and street signage, in accordance with the Agreement and as otherwise provided in the sale guidelines attached to the Agency Agreement (the "Sale Guidelines"), which Sale Guidelines are hereby approved in the form attached hereto; provided that written agreements between the Agent and any landlord or overlandlord of the Closing Locations (collectively, the "Landlords") modifying the terms of the Sale Guidelines at applicable locations shall govern the conduct of the Sale at such store locations.
>
> . . .
>
> 8. The provisions of this Order shall be self-executing notwithstanding any restrictions in the Agreement (other than the need for the Debtor's prior consent) on the Agent's ability to conduct the Sale in compliance with applicable laws or Closing Location leases. This Order authorizes the Debtor and the Agent to consummate the Agreement and to conduct the Sale at the Closing Locations, including, without limitation, conducting and advertising of the Sale in accordance with the Agreement, the Sale Guidelines and this Order; and no further approval, license or permits of any governmental authority shall be required; provided, however, that the Debtor and/or the Agent continue to be bound by and comply with state and local public health and safety laws ("Safety Laws"), and tax, labor, employment, environmental, and consumer protection laws, including consumer laws regulating deceptive practices and false advertising (collectively, "General Laws"), to the extent applicable.
>
> 9. If any parties or persons, including but not limited to Landlords, subtenants, utility companies, governmental agencies (except to the extent provided otherwise in this Order), sheriffs, marshals or other public officers, creditors and all those acting for or on their behalf, believe that cause exists to: (a) prohibit the Agent from advertising the Sale, to the extent same is consistent with the Agreement; (b) in any way interfere with or otherwise impede the conduct of the Sale or other liquidation or auction sales at the Closing Locations or corporate headquarters or the use or maintenance of the Merchandise and FF&E thereat; or (c) institute any action or proceeding in any court or other administrative body having as its objective the obtaining of an order or judgment against the Debtor, the Agent or a Landlord which might in any way directly or indirectly obstruct or otherwise interfere with or adversely affect the conduct of the Sale or other liquidation sales at the Closing

Locations or corporate headquarters and/or seek to recover damages for breach(es) of covenants or provisions in any lease or sublease based upon any relief authorized herein, this Court shall retain exclusive jurisdiction to resolve such dispute, and such parties or persons shall take no action against the Debtor, the Agent, the Landlord or the Sale until this Court has resolved such dispute. This Court shall hear the request of such persons or parties with respect to any such disputes on an expedited basis, as may be appropriate under the circumstances.

Upon close review of the order and the law, we concluded that the order did not pre-empted local regulations, especially safety-related codes like the snipe sign ordinance. Accordingly, code enforcement officials were authorized to remove Sofa Express snipe signs. Sofa Express, however, was placing the signs out on Friday afternoon, and collecting them on Sunday – during hours when code enforcement officers are not typically on duty – so enforcement by removal of the signs was problematic.

Other means of enforcement were available, including fines and injunctive relief. Because Sofa Express was in bankruptcy and essentially already unable to pay its debts, fining them would likely not have been an effective deterrent. The possibility of obtaining an injunction was considered. However, this likely would have involved entering an appearance in the Nashville bankruptcy court, and the employment of outside counsel admitted to practice in that court. It would also have required proceedings in Superior Court here. Further, the time required to obtain an injunction could have exceeded the duration of the sale.

Despite the timing and logistical issues associated with removing the signs, City staff – working 4-5 weekend days – removed over 250 signs. On at least one weekend, State Department of Transportation workers also removed some signs. Toward the end of the bankruptcy sale, notices of violation were issued to Sofa Express, and the sale concluded thereafter.

The snipe sign ordinance empowered the staff to remove the signs, without the time involved in following the usual pre-enforcement notice process. In that sense, the ordinance was effective. Recommendations for more effective enforcement include: (1) if we learn of a pending court-ordered bankruptcy sale, make the bankruptcy court and the parties aware of the requirements of our ordinances, and the reasons for those requirements, as early in the process as possible, so as to affect the structure of the order; (2) arrange for "on call" weekend sign code enforcement. Experience has shown that many temporary sign violations occur on the weekends anyhow, and having someone available to investigate possible violations and enforce the Code when warranted may be helpful.

In response to Vice-Mayor Davis, City Attorney Oast said it may be worth exploring the depth we go to in enforcing our snipe signs, e.g., signs for charitable organizations, Bingo games, Boy Scouts spaghetti dinner, etc.

Mayor Bellamy suggested reviewing some best practices for instances like this so that we can fine individuals and recoup some of the staff costs in removing the signs.

Councilman Mumpower was interested in the "on call" weekend sign code enforcement because if we have an ordinance, we need to enforce it.

B. RESOLUTION NO. 08-127 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE PURPLE BALL SPONSORED BY THE ASHEVILLE ARTS COUNCIL ON JUNE 14, 2008

Vice-Mayor Jones said that the Asheville Arts Council has contacted him to ask for Council's approval of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Purple Ball sponsored by the Asheville Arts Council on June 14, 2008, from 5:00 p.m. - 1:00 a.m., on Sunday, June 15, 2008, within the Pack Square Green Area located northwest of the intersection of Market Street and South Pack Square.

Vice-Mayor Davis moved for the adoption of Resolution No. 08-127. This motion was seconded by Councilman Newman and carried on a 6-1 vote, with Mayor Bellamy voting "no."

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C. LAWSUIT

On June 6, 2008, the City received the following Complaint: County of Buncombe vs. ASHW I, LLC d/b/a Days Inn East Owner; William M. Hodges, Jack H. Ward, Mobasher A. Soofi and Saba Kim Soofi, Beneficiaries; Charles M. Cushing Jr., Trustee; City of Asheville, Judgment Creditor; Otis Eugene Keaton and Lewanna V. Keaton, Judgment Creditors; PSNC Energy, Judgment Creditor; Internal Revenue Service, federal tax lien. The nature of the proceeding is tax foreclosure proceedings for unpaid real estate taxes.

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Rev. Christopher Chiaronmonte spoke about the homeless issue in Asheville and questioned why the Pritchard Park water drinking fountain only on during the Bele Chere Festival. Mayor Bellamy asked the City Manager to investigate the condition and operation of the water fountain at Pritchard Park.

Mr. Gillian Kems thanked City Council for what they have done for the homeless in the community and praised City Manager Jackson for the helpful and respectful staff in his office.

Mr. Jake Quinn hoped that the Grove Park neighborhood will be patient while the traffic calming measures are being installed in their community.

Mayor Bellamy thanked City staff and the Mayor's Task Force on Veterans Affairs for the wonderful Memorial Day Celebration.

Mayor Bellamy noted that North Carolina Commissioner of Labor Cherrie Berrie recognized the Public Works Department staff for their work in accomplishing some training in leadership.

Mayor Bellamy also noted that the Asheville Fire Department has been recognized by the Optimists Club.

Mayor Bellamy urged the community to attend the next Downtown Master Plan meeting on June 12, 2008, at 6:00 p.m. in the Civic Center Banquet Hall.

Mayor Bellamy noted some good news, recognizing Councilwoman Cape's son who graduated from Asheville High School, Vice-Mayor Davis' niece who graduated from Hendersonville High School, Councilman Russell's son who graduated from a 4-year old pre-school program, and Councilwoman Jones' daughter who will be a 1st grader. She was also proud that her cousin graduated from T.C. Roberson and her son is going to kindergarten

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 10:32 p.m.

Madalen Burleson
CITY CLERK

Jerry M Bellamy
MAYOR

Tuesday – June 17, 2008 - 3:00 p.m.

Worksession

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; Councilman William A. Russell Jr.; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

BUDGET REVIEW

Chief Financial Director Ben Durant said that the last Fiscal Year (FY) 2008-09 Budget Worksession is scheduled for June 17, 2008. At this worksession, staff will provide follow-up on outstanding issues from previous worksessions and receive final direction from Council regarding any changes that it would like to see made to the FY 2008-09 Manager's Recommended Budget.

Staff has identified the following items for discussion at the June 17, 2008, Budget worksession.

Funding for Youth-focused Gang Prevention Programs

At the May 27 Budget Worksession, Council directed staff to research the possibility of providing additional funding for youth-focused programs that would complement the Police Department's existing gang prevention efforts in the City. City Council indicated a willingness to commit $50,000 in funding to this effort. The report below highlights existing City of Asheville youth-focused programs and includes information on outside programs that applied for CDBG grant funding during this year's funding process.

City of Asheville Youth-Focused Gang Prevention Programs:

The following is a summary of the youth-focused/gang prevention programs funded in-house: (1) CAYLA - $158,000 (City funding is $100,000 - Grants/Donations - $58,000); (2) Gang Suppression Unit - $93,470; (3) Getting Back to Basics - $14,000; (4) Junior Citizens Police Academy - $4,000; (5) Police Explorers Post - $5,600; (6) Police Athletic League - n/a; (7) GREAT - $3,000; (8) After School & Summer Licensed Child Care - $?68,623; (9) Summer Playground Program - $135,560; (10) Summer Teen Program - $67,780; and (11) Community Centers - After School - $28,000. The specifics on these programs are below:

1) City of Asheville Youth Leadership Academy (CAYLA)

Description: The City of Asheville Youth Leadership Academy (CAYLA), created in April 2007, is designed to introduce Asheville High School students to civic-minded careers while encouraging them to take an active part in saving for their college education.

Objectives: CAYLA is committed to providing its students with a) a meaningful summer work experience, b) leadership development through seminars and community service, and c) college preparatory activities, including yearlong academic support. This year, as one of their assignments, the students will be researching gang prevention from a youth perspective and making recommendations to City staff.

Current Budget:
$100,000 - General Fund
$25,000 - Buncombe County Department of Social Services

$25,000 - CFWNC Strategy Grant
$4,000 - Gannett Foundation
$4,000 - Carolina First

Service Demand: CAYLA is an integral part of the City's 'Grow Our Own' initiative, as envisioned by City of Asheville Mayor Terry Bellamy and the Asheville City Council. Currently, in partnership with the Asheville City Schools Foundation, CAYLA is targeted to students who wish to attend college. However, the vision of CAYLA is to expand the program to include those students who are interested in vocational opportunities and to those students who are interested in obtaining meaningful employment upon high school graduation without post-secondary education.

2008 Stats: This year, 20 students were accepted into the program from a pool of 38 applicants at AHS. We anticipate with the expansion of the program as noted above, our service demand would be approximately 100+ students placed with the City, the County and with participating agencies and businesses.

2) APD Gang Suppression Unit

Description: Two detectives assigned to the Criminal Investigations Division who investigate gang related crimes throughout the City of Asheville.

Objectives: Tasked with gaining intelligence, suppressing, and cataloguing gang activity and providing gang prevention education to the community.

Current Budget: Personnel costs of $93,470 for two detectives

Service Demand: Six months into the program and evaluating future demands

3) Getting Back to the Basics

Description: Yearlong mentoring program that focuses on at-risk youth and on assisting their families with employment skills, social skills and advocacy training.

Objectives: To provide year-round support and services to families with youths ages 11-21 who are socially or economically disenfranchised from the Asheville Metropolitan Community.

Current Budget: $14,000 from APD and additional funds from private donors.

Service Demand: Increased service could be provided based on funding and volunteer support.

4) Junior Citizens Police Academy

Description: Free, week-long summer program that teaches teenagers, ages 13-17, more about the department's operations.

Objectives: To give youth an appreciation for law enforcement and to foster positive relationships between police and participating youth.

Current Budget: Approximately $2,500 for the week for supplies; $1,500 in staff time.

Service Demand: Currently capped at 35 youth, but could be expanded into a two-week program to encourage more participation.

5) Police Explorers Post

Description: Free program that is a partnership between APD and the Boy Scouts of America.

Objectives: Promotes positive interactions between police and youth and gives young people hands-on experience with law enforcement activities, such as fingerprinting children as APD Explorers did for families at the Asheville Mall at this year's Community Police Day.

Current Budget: $5,600

Service Demand: Currently recruiting more young people to participate and expand the program.

6) G.R.E.A.T.

Description: Partnership between the APD and Asheville City Schools to provide "Gang Resistance Education and Training" to middle school students.

Objectives: To give students the tools and support they need to resist the allure of gangs and their associated criminal activity.

Current Budget: $3,000

Service Demand: APD offers will deliver program to as many children as school system wants.

7) Police Athletic League (PAL)

Description: Program under consideration in which police would partner with Parks and Recreation to create a sports league.

Objectives: Offering an opportunity for youth to be mentored by police officers while providing positive activities that would deter them from gang activity.

Current Budget: N/A

Service Demand: N/A

8) After School and Summer Licensed Child Care Programs

Description: The After School and Summer Program provide licensed child care, supervised recreation and enrichment activities to children in grades kindergarten through 5th grade. The program operates during the school year in hours after school, teacher work days, and holidays and during the summer out of school months. Activities include arts and crafts, games, sports, science, music, dance, homework time, and special events. Nutritious snacks are provided daily. The program is provided in partnership with Asheville City Schools.

Current Budget:	
Total Cost for Child Care Program	$268,623
Total Revenue	$261,000

Service Demand: Vance site has an enrollment of 65 participates and Jones site has an enrollment of 35 participants. As for both summer sites, we have started a wait list, due to current staffing limits. We also have a wait list for Vance After School each year as well.

9) Summer Playground Program: June 9 – August 7

Description: A nine-week supervised recreation program for rising 1st – 5th graders, located at Asheville area community centers. This drop-in program includes games, crafts and field trips.

Current Budget:
Total Cost for Summer Playground Program $135,560

Service Demand: The summer program serves a total of 351 participants at nine community center sites. We currently have 58 individuals on the waiting list.

10) Summer Teen Program: June 9 – August 7 (9 weeks)

Description: A nine-week supervised recreation program for teens ages 12-15, located at Asheville area community centers. This drop-in program provide affordable summertime activities for youth in the area of arts and crafts, music-dance, nature and outings, group active and quiet games as well as sports and hobbies.

Current Budget:
Total Cost for Summer Teen Program $67,780

Service Demand: The summer program serves a total of 92 participants at (5) five community center sites. We currently have 0 individuals on the waiting list.

11) Community Centers-After School Programs (42 weeks)

Description: The After School Program is a safe haven at (8) different community centers throughout the city and provides supervised recreation and enrichment activities to children in grades kindergarten through 5th grade. The program operates during the school year in hours after school, teacher work days, and holidays. Activities include arts and crafts, games, sports, science, music, dance, homework time, and special events.

Current Budget:
Total Cost for Summer Playground Program $28,000

Service Demand: The after-school program serves a total of 230 participants at (8) community center sites.

The following is a summary of the youth-focused/gang prevention program funded with Community Development Block Grant application that potentially addresses gang prevention: Hillcrest Program (Hillcrest Enrichment Program) - $28,200. The specifics on this program is below:

1) Hillcrest Enrichment Program - $28,200

Description: Serves children aged 6-14 years mainly from Hillcrest Apartments. Provides summer activities five days a week, 10:00 AM to 4:00 PM, and tutorial help and activities during the school year, 2:00 PM to 6:00 PM. 30 slots. Operated by the Housing Authority. Funds requested for staff salaries.

Objectives: Improve student academic performance; involve parents; reduce juvenile crime.

Pros:
- Well-established program; scored 74% in staff evaluation
- 83% of students met grade expectations in reading & math skills last year

- Helps highly at-risk children and involves their families
- Funded $7,000 below requested amount and could use additional funds to hire more experienced tutors during school year.

Con:
- Small program, not City wide

The following is a summary of the youth-focused/gang prevention programs that are not funded: Mission Possible - $28,190; Better Skills - Better Jobs - $25,000; and Each One Reach One - $10,000. The specifics on these programs are below:

1) Mission Possible – requested $28,190

Description: Summer program at Mission Hospitals providing experience in health care professions for 30 high school students, with follow-up mentoring through school year. Operated by Mission Healthcare Foundation. Funds requested for salaries, supplies, and student stipends.

Objectives: Successful course completion; improved academic performance;

Pros:
- Unique program emphasizing career possibilities
- Partnership with Asheville High School
- Scored 53% in staff evaluation

Con:
- Students generally low-income but not the most vulnerable to gang activity

2) Better Skills-Better Jobs – requested $25,000

Description: Employment and training program for public housing residents. Operated by the Housing Authority. Funding requested for client training costs and childcare.

Objectives: Employment and job retention

Pros:
- Well thought out program
- Scored 63% in staff evaluation

Con:
- Not closely related to gang prevention: clients mainly women aged 20-35

3) Each One Reach One Youth Services – requested $10,000

Description: Summer basketball program for 250 youth up to 21 years, with year-round mentoring and tutoring component. Operated by Each One Reach One Youth Coalition. Funding requested for team uniforms, supplies, and referees.

Objectives: Improve academic performance; reduce juvenile crime.

Pros:
- Targeted to youth at high risk of gang involvement
- Large scale summer program (200 served in 2007)
- Over 20 committed volunteers serving as coaches, mentors, etc.

Cons:
- Agency has no full-time staff, no audit, and limited capacity for the detailed record

keeping required by CDBG regulations. Therefore scored only 36% in staff evaluation.
- Summer activity is not full-time (8-10 hours per week).

Follow-Up on Transit Expenditure & Revenue Trends

Council requested staff provide additional information on increases in the Transit Fund budget over the last four fiscal years, as well as show trends in federal and state grant funding over this same time period.

Director of Transit and Engineering Cathy Ball said that there has been an increase of $1.6 Million from Fiscal Year 2006, which is attributed to the following: (a) increase in gas prices; (b) increase in salaries/benefits; (c) increase in maintenance costs; (d) expanded services (1) Fiscal Year 2007 extended evening services ($275,000 estimate); and (2) Fiscal Year 2008 Transit Master Plan - $100,000; and (e) pass through to Henderson County.

Using a chart, she showed the trends of Fiscal Year 2006 - $3.8 Million; Fiscal Year 2007 - $4.3 Million; Fiscal Year 2008 - $5.0 Million; and Fiscal Year 2009 budget - $5.4 Million.

Staffing Trends

Mr. Durant reviewed the multi-year staffing analysis so as to allow Council to review position growth in key service areas to compare back to strategic initiatives.

Fire Inspection and Water Wholesale Rate Fee Changes:

At the April 22, 2008, meeting, Council adopted the proposed FY 2008-09 fee changes that had been reviewed and endorsed by the Revenue & Finance Committee with two exceptions. Council requested more information before adopting the proposed wholesale water rates, and staff asked for additional time to finalize the proposed changes to the fire inspection fees. The Revenue & Finance Committee met on May 16, 2008, to review these two outstanding fee proposals, and voted to endorse staff's recommendations. He reviewed copy of the proposed changes to the fire inspection fees ($230,000) and water wholesale fees ($18,600). Council will be voting on these changes as a part of the budget adoption scheduled for the June 24 meeting.

Additional Grant Funding:

Since the FY 2008-09 Manager's Recommended Budget was originally presented to City Council on May 13, the City has received notice of additional grant funding that we will receive to support the City of Asheville Youth Leadership Academy (CAYLA) program and our environmental sustainability efforts. For the CAYLA program, the City will receive $25,000 each from Buncombe County and the Community Foundation of Western North Carolina; along with $4,000 from the Gannett Foundation and $2,000 (plus the salary of one CAYLA student intern) from Carolina First Bank. This additional funding for CAYLA will allow the City to meet the increased expenses of administration and expansion and retain the current Program Coordinator as a full-time (FTE) position. The City has also been awarded a $40,000 Mobile Source Emissions Reduction Grant from the N.C. Department of Environment and Natural Resources (DENR). One of the vehicles slated for replacement in next year's Capital Improvement Program (CIP) is a knuckle boom used for refuse collection. This grant funding will allow the City to purchase a compressed natural gas (CNG) knuckle boom instead of a diesel-powered vehicle. Staff will include the grant funding for these two programs in the budget ordinance that is brought before Council at the June 24 meeting.

Other Issues:

Also reviewed is information on Council FY 2008-09 salaries and travel allocation if Council would like to further discuss this information. Staff asked if Council wanted to provide

$50,000 in additional funding for youth-focused/gang prevention programs. Staff is also prepared to discuss any other budget issues that Council would like to address at this worksession.

Staff recommends that Council continue discussions of its budget priorities and provide staff with final direction on the FY 2008-09 Budget in preparation for adoption of the Budget at Council's next meeting on June 24.

Gang Prevention Programs

Councilman Newman wondered whether the City's participation in the Mission Possible project is still timely. Regarding the Better Skills - Better Jobs program, he felt it was a good program but does not really focus on youth. He did support the Each One Reach One program.

Councilman Mumpower felt the three unfunded programs were good, however, until we stop the open air drug market, drug thugs will continue to corrupt our children. He would advocate for the City continuing to concentrate on the one thing we can do that no one else can do - and that's enforcement.

Councilwoman Jones supported the Each One Reach One program and spoke in support of expanding on a limited scale the staffing that we have in our existing programs, e.g., the Summer Teen Program that has a waiting list.

Councilwoman Cape supported the Each One Reach One program and would be interested in learning more about how the Parks & Recreation Department would expand some of their programs if given additional resources.

Mayor Bellamy felt the information provided to Council identifies the need that the City needs to do more on gang prevention. They have done a remarkable job on focusing on youth - children under the age of 15. However, a lot of our issues are with teens over the age of 15. She didn't want the focus being on just unfunded programs, she wanted funding for gang prevention. The addition of police officers is not the only solution because two of our highest crime areas in the City two years ago (Burton Street and Pisgah View) have turned themselves around in that their success was not only the increased police presence, but it was the individuals in the neighborhood who took over their streets with jobs and enrichment programs. She supported the Each One Reach One program (which had previously applied for Community Development Block Grant (CDBG) funds but was not granted any funding due to the limited dollars of the CDBG program) working with the teens over the age of 18. She was not limiting her support of additional dollars for gang prevention just on these programs because there are some successful models already out there that need some assistance. Her goal is to see programs that take the teens off the street and teach them a trade. She asked City Manager Jackson for information regarding the overall investment in public safety, i.e., gang prevention officers, take-home vehicles, etc. She spoke about another success from the Weed & Seed Program being the community garden, in that the residents are not only providing food to the residents, but they are also selling the produce they grew. She said that Mission Possible is just for the summer, but are there other programs out there that we can partner with to ensure that our teens have an opportunity to be employed. We need to look at true solutions in working with the community and cultivating support to provide jobs for our teens.

Transit Expenditure & Revenue Trends

Assistant Director of Transportation and Engineering Ken Putnam and Transit Manager Mariate Echeverry responded to various questions from Council, some being, but are not limited to: how many staff members have been added to transit since 2006; fuel aside, what is the biggest hit on the $1.6 Million increase; do the bus routes to Weaverville and Black Mountain add significantly to the increase in the transit budget; are we in the process of replacing our buses, and if so, what are the costs; are the bus drivers City employees; is the biggest increase the

increased health care costs and salaries for the bus drivers; is the $500,000 pass-through factor in the $1.6 Million increase; and what is the total cost to operate our transit system.

Councilman Mumpower felt we are getting beyond the point of realism in that we are starting to exceed national averages in terms of the amount of subsidy which has gone up roughly 50% since 2006.

Councilwoman Cape felt that transit is an infrastructure that has been under-funded for way too long and it is a key item in the community. She supported the extended services and felt transit is a community-wide crisis and we can't take away the little transit options we offer people.

Councilman Newman felt the only meaningful transit service enhancements over the past couple of years was the creation of very basic bare bones evening transit service and he felt the City should provide that basic service. He was pleased we are doing a Master Transit Plan because we need to make sure that the money we invest in transit is the best cost effective way to do so.

Councilman Russell felt that the salaries and benefit increases for staff over the last four years is not exaggerated, with the normal cost of living adjustments. He was pleased that we have a chance with the new transit management company to see how we can run the transit system most cost effective.

At the suggestion of Vice-Mayor Davis, it was the consensus of Council for interim reports be provided to Council about the ridership on the expanded routes.

Mayor Bellamy is supportive of the budget and also supportive of receiving a comprehensive look at the ridership issues.

Water Wholesale Rate Fee

In response to Mayor Bellamy, Mr. Ron Kerns, Water Resources Operations Manager, explained that we communicated verbally with our four wholesale water customers our Capital Improvement Program for the water system.

Economic Development Commission Request

Mayor Bellamy said that regarding a request for $50,000 for participation on the Economic Development Commission, she supported the allocation, with a caveat that a portion of that go towards helping us find a solution to our teen employment needs. She wants tools in place for all of our young people to be successful and requested the Economic Development Commission come back with some benchmarks in ways that help us achieve that goal.

Vice-Mayor Davis spoke in support of the $50,000 allocation in that a big portion of the 600 new jobs that came to our community last year are a result of Commission's work.

Councilman Newman, Vice-Mayor Davis and Councilwoman Jones spoke in support of Mayor Bellamy's caveat on the $50,000 allocation to the Economic Development Committee.

Councilman Mumpower felt we should concentrate on our core responsibilities and leave things that other people can do better than us to those other people. This is one of those things and he could not support the $50,000 allocation to the Economic Development Commission.

Councilwoman Cape supported $50,000 to the Economic Development Commission and suggested a conversation with the Commission to clarify whether the City is being asked to contribute $50,000 to have a seat on that Commission. In addition, she noted that Buncombe County pays $365,000 and since City residents are also County residents, City residents are

already contributing to that bottom line. She would support the allocation this year but didn't want them to think that she would support it annually without having some input in a comprehensive study of what the City does contribute to.

Councilwoman Jones supported the funding for the Economic Development Commission with the Mayor Bellamy's caveat.

Council Line Items

Councilwoman Cape spoke about City Council budget line items. Council members are paid $13,000 a year (Mayor receives $18,000) and roughly $5,000 a year for gas and other items. Serving on Council is an honor and service she is happy to perform, but she felt at some point the community has to have the option to evaluate what they expect of their Council members, e.g., expecting where they should be, and remembering that most people have to work for a living. There is also a line item for $3,000 each for Council members to travel and attend local events. Council members are invited to local events that far exceed this amount of money so she asked the community to understand when a member is not able to attend the event. She felt it's fair for the community to understand what it is to do this job as a citizen representative.

Throughout discussion of Council members voicing their opinion on Council salaries and travel budget, Mr. Durant and Mr. Jackson responded to various questions/comments, some being, but are not limited to: what is the cost of living; does City Council get an incremental increase automatically every fiscal year; and how does Council's increase compare to City staff's annual increases.

Fire Inspection Fees

Assistant City Manager Richardson responded to a question raised by Councilman Mumpower regarding the formula for computing the actual cost for service if fire personnel have to be on duty regardless of whether we use them for inspections.

In summary, (1) there was not majority support to fund the Mission Possible Program; (2) there was not majority support to fund the Better Skills-Better Jobs program; (3) there was consensus of the majority of Council to support the Each One Reach One program; (4) staff was requested to get additional information on ridership; (5) majority of Council support to approve the fire inspection fees; (6) majority of Council support to fund $50,000 to the Economic Development Commission with the caveat, in the contract similar to the outside agencies, that a portion of that go towards finding solutions to our teen employment needs; and (7) majority of Council support for the proposed Council's budget line items (with the policy coming back to Council at a later date).

Mayor Bellamy requested the presentation on the public safety trends.

PROPERTY DONATION BY PROGRESS ENERGY

City Attorney Oast said that this is the consideration of a resolution accepting donation of real property (4 acres – Riverside Drive) from Progress Energy

Last January, following some preliminary negotiations at the staff level, City Council authorized the City to enter into an agreement with Carolina Power & Light Company d/b/a Progress Energy (herein "PEC") for the donation by PEC to the City of 4 acres of property along Riverside Drive, between the railroad tracks on the east and the French Broad River on the west, running under the RiverLink Bridge, and includes the Jean Webb Park, currently designated as a County park.

The property was previously used as a gas manufacturing plant, and was the subject of an extensive environmental remediation process in 2004 and 2005. Pursuant to State law, PEC may make the property available for use for park and recreation purposes, subject to certain conditions and restrictions on its use. The details of the proposal were set out in the Staff Report from January 22, 2008. That report also had a map showing the location of the property. Of particular importance are the restrictions on the use of the property, which are summarized in the Staff Report.

As stated in the January Staff Report, the purpose of the Agreement was to indicate the City's willingness to accept the donation (with the restrictions and conditions), and to give the City some time to perform "due diligence" investigation of the environmental information, the title, and other matters, in order to determine if there were conditions that prevents the City's proposed use of the property, or impediments to the title that could not be cured. The Agreement was for 90 days, or until May 6. Due to the volume of material to review, and complexity of work, the time for completion of this work was extended by agreement to June 15. The title and environmental work have now been completed.

A. Environmental work. The environmental report explains how the review was conducted, including all of the documents reviewed, and contains the following conclusion:

> Based on the thorough evaluation of the Main Site and the East Site and the Remedial Action Plan that was developed and implemented, the property of the former MGP is suitable for development of a park and recreational area by the City of Asheville. The institutional controls in the form of land restrictions are adequate to protect visitors and workers to developed areas.

B. Title work. The information of record on the title to this property has been thoroughly searched. Although some minor issues were identified, it is anticipated that we will be able to resolve those issues sufficiently to obtain title insurance without exception (other than standard exceptions). Even if we cannot obtain coverage for all of the property, the possibility that an adverse claim will be made is remote.

C. Park use / restrictions. The restrictions on the use of the property are summarized in the January Staff Report and will not be repeated here. They have been reviewed with the Parks and Recreation staff. The staff does not view the restrictions as interfering with the planned use of the area for a park facility.

D. Other issues. There is currently in effect a license agreement between PEC and Buncombe County, dating from 1988, to allow the County to operate Jean Webb Park, which is included in the area to be donated to the City. Since last year, when the City began maintaining the property under agreement with PEC, we have also been maintaining Jean Webb Park under informal agreement with the County. In connection with the donation of the property to the City, the County has verbally agreed that it will terminate the license agreement and turn the area over to the City.

Due diligence and closing expenses could come to $20,000, $15,000 of which has already been budgeted. Development of the park and maintenance will be programmed into the budget for the Parks Department. At this time, no major capital improvements are planned.

Pros:

- Adds a key link to the City's parks and greenway system
- Activates a previously unused tract of land in a reviving area of the City
- Low acquisition cost
- Limited liability

Cons:

- Remote potential for future environmental issues to arise
- Limited uses

City staff recommends adoption of resolution accepting donation of property from Progress Energy Company.

In response to Councilman Mumpower, City Attorney Oast said that the tax value of the property is $370,800. He said that he would have to get the appraised value from Progress Energy.

Parks & Recreation Director Roderick Simmons responded to Councilman Mumpower's inquiry about the anticipated annual maintenance cost of this property.

At 5:04 p.m., Mayor Bellamy announced a short recess.

BOARDS/COMMISSIONS

Vice-Mayor Davis said that the Boards & Commissions Committee had a request from the Transit Commission to expand their duties. After speaking with the Director of Transportation and Engineering Cathy Ball, she recommended that we wait to consider any changes until after the Transit Master Plan. The Boards & Commissions Committee concurs with that recommendation. Councilman Newman, who is liaison to the Transit Commission, felt it would be appropriate to hear from the Transit Commission. He recommended, and Mayor Bellamy approved, that they be scheduled on an upcoming worksession agenda.

Regarding the WNC Air Quality Agency appointment, Vice-Mayor Davis said that he would talk with Buncombe County and the WNC Air Quality Agency to see if they would be willing to reduce the 6-year terms on that board. It was the Boards & Commissions Committee consensus to leave Mr. Kahl on that Board until a decision is reached.

Regarding the Airport Authority, it was the consensus of Council to reappoint Councilman Newman.

Regarding the Citizens-Police Advisory Committee, it was the consensus of Council to re-advertise for an additional month.

Regarding the Civic Center Commission, it was the consensus of Council to reappoint W.L. Lack and Elizabeth Jones and appoint John West.

Regarding the Civil Service Board, it was the consensus of Council to re-advertise for an additional month.

Regarding the Crime Stoppers Board of Directors, it was the consensus of Council to appoint David Herbert and Michele McClure.

Regarding the Film Commission, it was the consensus of Council to interview Duncan D. St. Clair, III; Trent McDevitt, Donna Daniels and Jodi Shell. In addition, it was the consensus of Council to get an update on the Film Commission structure.

Regarding the Historic Resources Commission, it was the consensus of Council to reappoint Diane Duermit and appoint Hillary Gerstenberger.

Regarding the Recreation Board, it was the consensus of Council to (1) reappoint Scott Barnwell and Geoffrey Ferland; (2) appoint Wanda Hawthorne and Lonnie Gilliam; and (3) interview Betty Young and Davidson Jones.

It was the consensus of Council that the resolutions making these appointments be placed on the Consent Agenda at the June 24, 2008, meeting.

Vice-Mayor Davis noted that City staff is working on an ordinance to dissolve the Police Officers and Firefighters Disability Review Board. Those few employees that are still eligible won't qualify for benefits from this Board because their Local Government Employees Retirement System monthly benefit will exceed what they would be eligible for through this Board.

Closed Session

At 5:40 p.m., Councilman Mumpower moved to go into closed session for the following reasons: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including potential litigation. The statutory authorization is contained in G.S. 143-318.11(a) (3); (2) To prevent the disclosure of information that is confidential pursuant to the laws of North Carolina. That law that makes the information confidential is pursuant to N.C. Gen. Stat. sec. 143-318.10 (e). The statutory authority is contained in G.S. 143-318.11(a)(1); and (3) To consider the qualifications, competence, performance, character, fitness, conditions of appointment of an individual public officer or employee. The statutory authorization is contained in G.S. 143-318.11 (a) (6), and to prevent the disclosure of information that is confidential pursuant to G.S. 160A-168, the Personnel Privacy Act. The statutory authorization is contained in G.S. 143-318.11 (a) (1). This motion was seconded by Councilman Russell and carried unanimously.

At 6:40 p.m., Councilman Mumpower moved to come out of closed session. This motion was seconded by Councilwoman Jones and carried unanimously.

Mayor Bellamy adjourned the meeting at 6:40 p.m.

Stephanie Brunson
CITY CLERK

Jerry M. Bellamy
MAYOR

Tuesday – June 24, 2008 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Councilman William A. Russell Jr.

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilwoman Jones gave the invocation.

I. PROCLAMATIONS:

A. RECOGNITION OF CITIZEN'S ACADEMY GRADUATES

Mayor Bellamy said that the City of Asheville's Citizens Academy emphasizes the importance of community involvement to City government. Citizens Academy is a 10-week program that engages and educates residents about City departments while providing a constructive forum for community feedback and input. The 2008 Academy was a tremendous success in meeting the goals of: (1) informing and educating the public on City services, operations and management; (2) engaging citizens in the government process by emphasizing the connection between City government, citizens and quality of life; and (3) encouraging participants to take an active role of leadership by understanding and gaining knowledge within their neighborhoods, workplaces and the City as a whole.

Mayor Bellamy then recognized the following 2008 Citizen Academy graduates: Abbie Emison, Adam Pittman, Bee Christensen, Brenda Macauley, Bruce Koloseike, Donna Bateman, Dorothy Waller, Georgia Shannon, Gina Braxton, Janiece Meek, Jen Bowen, Jennifer Poore, Jodi Shell, John Parrish, Juma Jackson, Karen Etheredge, Kendra Turner, Larry Gant, Lawrence Waller, Leon Escude, Lucy Oliver, Mark Diem, Mountain Xpress Staff, Robert Zieber, Sharon Wadsworth, Tim Flora, Tom Roberson, Tony Cooper and Vicki Escude.

Mr. Lawrence Waller, 2008 Citizen Academy graduate, thanked City staff and the Council for this wonderful opportunity to participate in this program.

II. CONSENT AGENDA:

At the request of Councilman Mumpower, Consent Agenda items "C", "D", "H", "I" and "P" were removed from the Consent Agenda for discussion and/or individual votes.

At the request of Mayor Bellamy, Consent Agenda Item "J" was removed from the Consent Agenda for discussion and/or an individual vote.

At the request of Vice-Mayor Davis, Consent Agenda Item "O" was removed from the Consent Agenda for discussion and/or an individual vote.

A. APPROVAL OF THE MINUTES OF THE FORMAL MEETING HELD ON JUNE 10, 2008; AND THE WORKSESSION HELD ON JUNE 17, 2008

B. ORDINANCE NO. 3629 - BUDGET AMENDMENT FROM BUNCOMBE COUNTY AND APPALACHIAN SUSTAINABLE AGRICULTURE PROJECT TO ASSIST WITH CONSTRUCTION OF UTILITY IMPROVEMENTS TO THE PARKING LOT AREA OF THE PUBLIC WORKS BUILDING LOCATED ON S. CHARLOTTE STREET FOR THE CITY MARKET

Summary: The consideration of a budget amendment to accept $19,000 in funds from Buncombe County and Appalachian Sustainable Agriculture Project (ASAP) to assist with construction of utility improvements to the Parking Lot area of the Public Works Building located on S. Charlotte Street in the City of Asheville.

The City has worked with ASAP and Buncombe County to develop and implement a new City Market which is located at the Parking Lot of the Public Works Building on S. Charlotte Street. The City Market opened in April and is exceeding initial estimates for utilization and revenues. As part of the project, minor utility improvements are being made to allow for public water and electricity to the site. These improvements will benefit the city and will allow for increased product offerings by vendors as well as increase safety and cleanup ability for the market.

The City has received quotes for the utility improvements totaling $27,000.

This action complies with the City Council's Strategic Operating Plan in that the improvements support implementation of a downtown farmers market.

Pros:

- Provides utility service which will allow vendors to increase offerings.
- Provide potable water for vendors and visitors to the Market.
- Provide water to assist with site clean up.
- Provide utilities the City can utilize for other activities.

Con:

- Construction will cause some minor disruption of the site.

The Office of Economic Development has allocated existing funds for the project and no budget amendment is required for the City. A budget amendment is required to accept funding from Buncombe County and ASAP.

City staff recommends City Council authorize a budget amendment to accept $19,000 in funds from Buncombe County and Appalachian Sustainable Agriculture Project to assist with construction of utility improvements to the Parking Lot area of the Public Works Building located on S. Charlotte Street in the City of Asheville.

ORDINANCE BOOK NO. 24 – PAGE 506

C. RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A TEMPORARY SERVICES AGREEMENT BETWEEN THE CITY OF ASHEVILLE AND FORSYTH INITIATIVE FOR RESIDENTIAL SELF-HELP TREATMENT INC. FOR TEMPORARY WORKERS

This item was removed from the Consent Agenda for discussion and/or an individual vote.

D. BUDGET AMENDMENT TO REPLACE A FIRE ENGINE THAT WAS INVOLVED IN A COLLISION

This item was removed from the Consent Agenda for discussion and/or an individual vote.

E. RESOLUTION NO. 08-130 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE ASHEVILLE HUMANE SOCIETY FOR ANIMAL SHELTER SERVICES FOR ANIMALS WITHIN TERRITORIAL LIMITS OF THE CITY OF ASHEVILLE

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with the Asheville Humane Society for animal shelter services for animals within territorial limits of the City of Asheville.

For the past few years, Buncombe County has required the City to pay for animal shelter services through the Asheville Humane Society who has contracted with the County to run the animal shelter. The Asheville Humane Society has told City Staff that the cost for animal shelter to the City for FY 2008-2009 will be $127,050.00. This is a five percent increase from the cost of service last year. This cost is included in the Asheville Police Department's budget. The City and the Humane Society need to enter into an agreement for the shelter services for the term of July 1, 2008, through June 30, 2009.

The City of Asheville continuing its animal shelter contract through the Asheville Humane Society ties directly back through the City Council's Strategic Operating Plan, specifically the focus area of safe by actively enforcing animal control laws.

Pro:

- The City will not have to pay for the construction and operation of its own animal shelter to take care of its animal sheltering needs and the Humane Society will be responsible for the care of all animals brought to the shelter.

Cons:

- The City has to pay out of its general fund for shelter services where Buncombe County provides the same services to all other non-incorporated county residents at no additional cost except through county taxes.

The fiscal impact of this action is an increase of 5% from last year's shelter contract from $121,000 to $127.050.00.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into a contract with the Asheville Humane Society for animal shelter services for the term of July 1, 2008 through June 30, 2009.

RESOLUTION BOOK NO. 31 – PAGE 211

F. ORDINANCE NO. 3631 - ORDINANCE ENACTING A POSTED SPEED LIMIT ON SABIAN COURT, SAVANNAH WOODS COURT AND WARREN HAYNES DRIVE TO 25 MILES PER HOUR

Summary: The consideration of an ordinance to enact a posted speed limit on Sabian Court, Savannah Woods Court, and Warren Haynes Drive.

Sabian Court, Savannah Woods Court, and Warren Haynes Drive have been identified for speed concerns by residents, City Boards and Commissions, City Council, the Asheville Police Department, Transportation Services Division staff, and/or other City staff. The Transportation Services Division staff has conducted a field review along these streets to assess existing conditions including street geometry and conditions and/or speed studies. The Asheville Police Department supports the recommendation.

25 Miles Per Hour

Sabian Court is a residential street with an average pavement width of 25 feet, a total length of 0.04 mile, and on-street parking. The daily traffic volumes are estimated to be less than 50 vehicles per day. Currently, Sabian Court does not have a posted speed limit which means that the statutory speed limit of 35 mph is in effect.

1. Sabian Court, from Warren Haynes Drive to its dead-end, a distance of 0.04 mile from Warren Haynes Drive.

Savannah Woods Court is a residential street with an average pavement width of 25 feet, a total length of 0.10 mile, and on-street parking. The daily traffic volumes are estimated to be less than 50 vehicles per day. Currently, Savannah Woods Court does not have a posted speed limit which means that the statutory speed limit of 35 mph is in effect.

2. Savannah Woods Court, from a point 0.05 mile west of Warren Haynes Drive to a point 0.05 mile east of Warren Haynes Drive.

Warren Haynes Drive is a residential street with an average pavement width of 25 feet, a total length of 0.42 mile, several access points, and on-street parking. The daily traffic volumes are less than 250 vehicles per day and the 85th percentile speed is 37.6 mph. Currently, Warren Haynes Drive does not have a posted speed limit which means that the statutory speed limit of 35 mph is in effect.

3. Warren Haynes Drive, from SR 3412 (Sand Hill Road) to Savannah Woods Court.

Although not directly referenced in the Asheville City Development Plan 2025, it can reasonably be argued that establishing speed limits along city-maintained streets can positively affect the quality of life for its citizens. The following quote listed in A Pattern Language (Christopher Alexander, et al; 1977) illustrates the importance of speed control: "Nobody wants fast traffic going by their homes." (Page 119, The Asheville City Development Plan 2025).

Regarding the fiscal impact, the total estimated installation cost to the City is about $200.

The Transportation & Engineering Department requests that City Council approve the ordinance enacting posted speed limits along Sabian Court, Savannah Woods Court, and Warren Haynes Drive.

ORDINANCE BOOK NO. 24 – PAGE 510

G. RESOLUTION NO. 08-131 - RESOLUTION ACCEPTING HERITAGE DRIVE (EXTENSION), ASHWOOD DRIVE, ASHWOOD LANE, HEATHBROOK CIRCLE (EXTENSION) AND GLENWOOD CIRCLE AS CITY-MAINTAINED STREETS AS OUTLINED IN THE 2004 ANNEXATION SERVICES PLAN

Summary: The consideration of a resolution to accept Heritage Drive (Extension), Ashwood Drive, Ashwood Lane, Heathbrook Circle (Extension), and Glenwood Circle as city-maintained streets as outlined in the 2004 Annexation Services Plan for the Heritage Business Park Area, the Enka Park Area, the Ashwood Area, the Heathbrook Area, and the Sweeten Creek Road Area.

Section 7-15-1 (e) (4) (a) of the Code of Ordinances requires that streets dedicated for public uses be accepted by resolution of the City Council.

Heritage Drive (Extension) is a developer-constructed street that has an average width of 20 feet and a length of 0.01 mile.

Ashwood Drive is a developer-constructed street that has an average width of 17 feet and a length of 0.39 mile.

Ashwood Lane is a developer-constructed street that has an average width of 16 feet and a length of 0.08 mile.

Heathbrook Circle (Extension) is a developer-constructed street that has an average width of 21 feet and a length of 0.14 mile.

Glenwood Circle is a developer-constructed street that has an average width of 14 feet and a length of 0.04 mile *(does **not** include the cul-de-sac section at the end of the street)*.

Transportation and Engineering Department staff and Public Works Department staff have inspected these streets and recommend their change of ownership from privately-maintained streets to city-maintained streets.

Heritage Drive (Extension), Ashwood Drive, Ashwood Lane, Heathbrook Circle (Extension), and Glenwood Circle are streets listed in the 2004 Annexation Services Plan that the City would take over for maintenance.

Following City Council's approval of this resolution, Heritage Drive (Extension), Ashwood Drive, Ashwood Lane, Heathbrook Circle (Extension), and Glenwood Circle will be added to the official City Maintained Street Inventory (Powell Bill List).

Pros:

- The City of Asheville will receive Powell Bill Funds from the North Carolina Department of Transportation (NCDOT) to help fund the maintenance of the streets except for Glenwood Circle.
- Homes constructed along the subject streets increase the tax base for the City.

Cons:

- Powell Bill Funds will not cover 100% of the total cost to maintain the streets.
- Glenwood Circle is not eligible for Powell Bill Funds because its pavement width is less than 16 feet.

There should be no initial financial impact to the City, although the responsibility of maintenance will belong to the Public Works Department. The City will receive Powell Bill Funds in the future to help maintain the streets. Currently, the Powell Bill Funds equate to $1,886 per mile compared to the City's maintenance cost of $8,200 per mile.

Staff recommends that City Council accept Heritage Drive (Extension), Ashwood Drive, Ashwood Lane, Heathbrook Circle (Extension), and Glenwood Circle as city-maintained streets.

RESOLUTION BOOK NO. 31 – PAGE 212

H. RESOLUTION AUTHORIZING THE ACCEPTANCE OF PROPERTY DONATION FROM PROGRESS ENERGY CORP OF APPROXIMATELY 4.5 ACRES OF PROPERTY ON LYMAN STREET AND RIVER ROAD

This item was removed from the Consent Agenda for discussion and/or an individual vote.

I. RESOLUTION APPOINTING MAGDALEN BURLESON AS CITY CLERK OF THE CITY OF ASHEVILLE

This item was removed from the Consent Agenda for discussion and/or an individual vote.

J. RESOLUTION AUTHORIZING THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE JULY 4, 2008, CELEBRATION AND THE BELE CHERE FESTIVAL ON JULY 25 AND 26, 2008

This item was removed from the Consent Agenda for discussion and/or an individual vote.

K. RESOLUTION NO. 08-136 - RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE REGIONAL AIRPORT AUTHORITY

Summary: The term of Councilman Brownie Newman, as a member of the Asheville Regional Airport Authority, expires on June 30, 2008.

At the June 17, 2008, worksession, it was the consensus of Council to reappoint Councilman Newman to serve a 4-year term, term to expire June 30, 2012, or until his service on City Council ends.

RESOLUTION BOOK NO. 31 – PAGE 231

L. RESOLUTION NO. 08-137 - RESOLUTION APPOINTING MEMBERS TO THE CIVIC CENTER COMMISSION

Summary: The terms Max Alexander, W.L. Lack and Elizabeth Jones, as members of the Civic Center Commission, expire on June 30, 2008.

At the June 17, 2008, worksession, it was the consensus of Council to (1) reappoint Mr. Lack and Ms. Jones to each serve an additional 3-year term respectively, terms to expire June 30, 2011, or until their successors have been appointed; and (2) appoint Mr. John West to serve a three-year term, term to expire June 30, 2011, or until his successor has been appointed.

RESOLUTION BOOK NO. 31 – PAGE 232

M. RESOLUTION NO. 08-138 - RESOLUTION APPOINTING MEMBERS TO THE CRIME STOPPERS BOARD OF DIRECTORS

Summary: The terms of Councilman Carl Mumpower, Bill McGuire and William Price, as members on the Crime-Stoppers Board of Directors, expire on June 30, 2008.

The Crime Stoppers Board of Directors amended their by-laws to include two members appointed by the City Council.

At the June 17, 2008, worksession, it was the consensus of Council appoint Mr. David Herbert and Ms, Michele McClure to serve three-year terms respectively, terms to expire June 30, 2011, or until their successors have been appointed.

RESOLUTION BOOK NO. 31 – PAGE 233

N. RESOLUTION NO. 08-139 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE-BUNCOMBE HISTORIC RESOURCES COMMISSION

Summary: The terms of Diane Duermit and John Cram, as members on the Asheville-Buncombe Historic Resources Commission, expire on July 1, 2008.

At the June 17, 2008, worksession, it was the consensus of Council to (1) reappoint Diane Duermit to serve an additional three-year term, term to expire July 1, 2011, or until her successor has been appointed; and (2) appoint Hillary Gerstenberger to serve a three-year term, term to expire July 1, 2011, or until her successor has been appointed.

RESOLUTION BOOK NO. 31 – PAGE 234

O. RESOLUTION APPOINTING A MEMBER TO THE RECREATION BOARD

This item was removed from the Consent Agenda for discussion and/or an individual vote.

P. BUDGET AMENDMENT FOR CLAIMS SETTLEMENT FOR THOMPSON/BROWN VS. CITY OF ASHEVILLE

This item was removed from the Consent Agenda for discussion and/or an individual vote.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilwoman Jones moved for the adoption of the Consent Agenda. This motion was seconded by Vice-Mayor Davis and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

C. RESOLUTION NO. 08-129 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A TEMPORARY SERVICES AGREEMENT BETWEEN THE CITY OF ASHEVILLE AND FORSYTH INITIATIVE FOR RESIDENTIAL SELF-HELP TREATMENT INC. FOR TEMPORARY WORKERS

Summary: The consideration of a resolution authorizing the City Manager to sign a Temporary Services Agreement between the City of Asheville and Forsyth Initiative For Residential Self-Help Treatment, Inc. (F.I.R.S.T.) for temporary workers.

The City of Asheville requires temporary workers throughout the budget year for seasonal workloads in the Public Works Department (Sanitation and Street Divisions), and the Civic Center. This agreement is a collective contract for all City Departments.

F.I.R.S.T. is a non-profit organization that provides counseling to individuals and provides these individuals with opportunities to learn new skills through job placements with various organizations. The City of Asheville has utilized F.I.R.S.T staff for the past five years with excellent results.

Benefits to contracting with FIRST, Inc. include reduced costs in recruiting, hiring, and benefits for full-time workers. There is also a savings realized in management costs. The City is guaranteed all FIRST personnel requested enabling operations to be fully productive at all times.

This action complies with the City Council Strategic Operating Plan in that City infrastructure can be maintained and improved in a timely, consistent manner without the need of additional full-time staff.

Pros:

- Reduced costs in recruiting, hiring and benefits for full-time workers
- Management savings
- Utilizing personnel only on days when you need them and in various departments; therefore, eliminating the duplication of work crews

Con:

- None noted.

Contract amount for Streets, Sanitation and Civic Center - $212,000

City staff recommends City Council adopt a resolution authorizing the City Manager to sign a Temporary Services Agreement with the City of Asheville and Forsyth Initiative For Residential Self-Help Treatment, Inc. for temporary workers.

Mayor Bellamy felt the F.I.R.S.T. program is great but she felt there were even better programs in our local community that could benefit from this type of collaboration with the City. She would support the motion but asked staff to look at how the program might be expanded next year to reach others in the community who need this type of support.

In response to Councilman Mumpower, Public Works Director Mark Combs said that he has not reached out to any other service providers in that (1) we have had a good experience with F.I.R.S.T.; (2) they carrying worker's compensation and other blanket items that makes it very easy to call them and request more workers; (3) per worker cost of $8.50 an hour; and (4) it's a good program in terms of rehabilitation.

Councilman Mumpower moved for the adoption of Resolution No. 08-129. This motion was seconded by Councilwoman Cape and carried unanimously.

RESOLUTION BOOK NO. 31 – PAGE 210

D. ORDINANCE NO. 3630- BUDGET AMENDMENT TO REPLACE A FIRE ENGINE THAT WAS INVOLVED IN A COLLISION

Summary: The consideration of a budget amendment in the amount of $500,000 to replace a fire engine that was involved in a collision.

Fire Engine 10, a 2002 model truck, was damaged in a collision on April 5, 2008. The truck was deemed not able to be repaired and was totaled by the city's insurance provider. The insurance company has now provided $240,055 for insured damages. A similar replacement truck will cost $500,000. In order to fund this $500,000 expense, an appropriation from fund balance in the amount of $259,945 is necessary to cover the difference between the purchase price and the reimbursement amount received from the insurance provider.

This action complies with the City Council Strategic Operating Plan in that fund balance exists to be used for this type situation.

Pros:

- No personnel were seriously injured in the collision. All personnel were properly belted.
- This incident was the first serious collision of AFR apparatus in over 20 years.

Cons:

- Fund balance will be lowered by $259,945.

$259,945 will be appropriated from fund balance in order to make the replacement purchase. Based on staff's most recent year-end fund balance projections for FY 2007-08, this action will reduce available fund balance from 19.3% to 19.0%.

City staff recommends City Council adopt a budget amendment in the amount of $500,000 in order to purchase a replacement fire engine.

Councilman Mumpower moved for the adoption of Ordinance No. 3630. This motion was seconded by Vice-Mayor Davis and carried unanimously.

ORDINANCE BOOK NO. 24 – PAGE 508

H. RESOLUTION NO. 08-132 - RESOLUTION AUTHORIZING THE ACCEPTANCE OF PROPERTY DONATION FROM PROGRESS ENERGY CORP OF APPROXIMATELY 4.5 ACRES OF PROPERTY ON LYMAN STREET AND RIVER ROAD

Summary: The consideration of a resolution accepting donation of real property (4 acres – Riverside Drive) from Progress Energy.

Last January, following some preliminary negotiations at the staff level, City Council authorized the City to enter into an agreement with Carolina Power & Light Company d/b/a Progress Energy (herein "PEC") for the donation by PEC to the City of 4 acres of property along Riverside Drive, between the railroad tracks on the east and the French Broad River on the west, running under the RiverLink Bridge, and includes the Jean Webb Park, currently designated as a County park.

The property was previously used as a gas manufacturing plant, and was the subject of an extensive environmental remediation process in 2004 and 2005. Pursuant to State law, PEC may make the property available for use for park and recreation purposes, subject to certain conditions and restrictions on its use. The details of the proposal are set out in the Staff Report from January 22, 2008. That report also has a map showing the location of the property. Of particular importance are the restrictions on the use of the property, which are summarized in the Staff Report.

As stated in the January Staff Report, the purpose of the Agreement was to indicate the City's willingness to accept the donation (with the restrictions and conditions), and to give the City some time to perform "due diligence" investigation of the environmental information, the title, and other matters, in order to determine if there were conditions that prevents the City's proposed use of the property, or impediments to the title that could not be cured. The Agreement was for 90 days, or until May 6. Due to the volume of material to review, and complexity of work, the time for completion of this work was extended by agreement to June 15. The title and environmental work have now been completed.

A. Environmental work. The environmental report explains how the review was conducted, including all of the documents reviewed, and contains the following conclusion:

> Based on the thorough evaluation of the Main Site and the East Site and the Remedial Action Plan that was developed and implemented, the property of the former MGP is suitable for development of a park and recreational area by the City of Asheville. The institutional controls in the form of land restrictions are adequate to protect visitors and workers to developed areas.

B. Title work. The information of record on the title to this property has been thoroughly searched. Although some minor issues were identified, it is anticipated that we will be able to resolve those issues sufficiently to obtain title insurance without exception (other than standard exceptions). Even if we cannot obtain coverage for all of the property, the possibility that an adverse claim will be made is remote.

C. Park use / restrictions. The restrictions on the use of the property are summarized in the January Staff Report and will not be repeated here. They have been reviewed with the Parks and Recreation staff. The staff does not view the restrictions as interfering with the planned use of the area for a park facility.

D. Other issues. There is currently in effect a license agreement between PEC and Buncombe County, dating from 1988, to allow the County to operate Jean Webb Park, which is included in the area to be donated to the City. Since last year, when the City began maintaining the property under agreement with PEC, we have also been maintaining Jean Webb Park under informal agreement with the County. In connection with the donation of the property to the City, the County has verbally agreed that it will terminate the license agreement and turn the area over to the City.

Due diligence and closing expenses could come to $20,000, $15,000 of which has already been budgeted. Development of the park and maintenance will be programmed into the budget for the Parks Department. At this time, no major capital improvements are planned.

Pros:
- Adds a key link to the City's parks and greenway system
- Activates a previously unused tract of land in a reviving area of the City
- Low acquisition cost
- Limited liability

Cons:
- Remote potential for future environmental issues to arise
- Limited uses

Staff request adoption of a resolution accepting donation of property from Progress Energy Company.

Councilman Mumpower noted that his concerns regarding this action have been satisfactorily responded to by City Attorney Oast.

Councilman Mumpower moved for the adoption of Resolution No. 08-132. This motion was seconded by Councilwoman Cape and carried unanimously.

RESOLUTION BOOK NO. 31 – PAGE 218

I. RESOLUTION NO. 08-133 - RESOLUTION APPOINTING MAGDALEN BURLESON AS CITY CLERK OF THE CITY OF ASHEVILLE

Councilman Mumpower moved for the adoption of Resolution No. 08-133. This motion was seconded by Councilwoman Cape and carried unanimously.

RESOLUTION BOOK NO. 31 – PAGE 220

J. RESOLUTION NO. 08-134 - RESOLUTION AUTHORIZING THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE JULY 4, 2008, CELEBRATION

RESOLUTION NO. 08-135 - RESOLUTION AUTHORIZING THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE BELE CHERE FESTIVAL ON JULY 25 AND 26, 2008

Summary: The consideration of resolutions making provisions for the possession and consumption of malt beverages and/or unfortified wine at the July 4th Celebration and the 2008 Bele Chere Festival.

July 4th Celebration

The Benevolent Patriotic Order of the Does has requested through the Asheville Parks, Recreation & Cultural Arts Department that City Council permit them to serve beer and/or unfortified wine at the Ingle's July 4th Celebration and allow for consumption at this event.

The Ingle's July 4th Celebration will be held on Friday, July 4, 2008, from 1:00 PM – 10:00 PM within the boundaries of Pack Square Park including Court Plaza, Market Street between S. Pack Square and College Street and proceeding eastward to Davidson, as per the event area limits referenced on the accompanying site map.

Bele Chere Festival

The following organizations: Scapegoat Theatre Collective, Wild South, Run Amok Productions, PBL at AB Tech, Benevolent Patriotic Order of the Does, Asheville Ski Club, Asheville Area Paralegal Association, Cataloochee Ski Patrol and The Mediation Center have requested through the Asheville Parks, Recreation & Cultural Arts Department that City Council permit them to serve beer and/or unfortified wine at the 2008 Bele Chere Festival and allow for consumption at this event.

The 2008 Bele Chere Festival's Main Festival Area will be open on Friday, July 25, 2008 from12:00 PM – 11:00 PM, Saturday, July 26, 2008 from 10:00 AM – 11:00 PM and Sunday, July 27, 2008 from 12:00 PM – 6:00 PM.

The 2008 Bele Chere Festival's Ticketed Event Area will be open on Friday, July 25, 2008 from 7:00 PM – 11:00 PM and Saturday, July 26, 2008 from 7:00 PM – 11:00 PM.

The sale of malt beverages and/or unfortified wine would end at 10:30 p.m. in all instances; however, the possession of open containers of malt beverages and/or unfortified wine or consumption of malt beverages and/or unfortified wine would only be allowed during the periods as follows in the 2008 Bele Chere:

a. Main Festival Area
   1. Friday, July 25, 2008, from 12:00 Noon to 11 p.m.
   2. Saturday, July 26, 2008, from 10:00 a.m. to 11 p.m.

b. Ticketed Event Area
   1. Friday, July 25, 2008 from 6:00 p.m. to 11 p.m.
   2. Saturday, July 26, 2008 from 6:00 p.m. to 11 p.m.

There will be no sales and/or consumption of malt beverages and/or unfortified wine permitted on Sunday July 27, 2008

These actions do not tie-in with the Strategic Operating Plan, nor does it comply with any of the adopted City plans.

Pro:

- Allows fundraising opportunities for charity

Con:

- Potential for public safety issues

Regarding fiscal impact, there will be overtime pay for Ashville Police Department officers.

City staff recommends City Council adopt a resolution authorizing the City Manager to approve a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the July 4th Celebration and the 2008 Bele Chere Festival.

Councilman Newman moved for the adoption of Resolution No. 08-134. This motion was seconded by Councilwoman Jones and carried on a 5-1 vote, with Mayor Bellamy voting "no."

Councilman Newman moved for the adoption of Resolution No. 08-135. This motion was seconded by Councilwoman Jones and carried on a 5-1 vote, with Mayor Bellamy voting "no."

RESOLUTION NO. 80-134 – RESOLUTION BOOK NO. 31 – PAGE 211
RESOLUTION NO. 08-135 – RESOLUTION BOOK NO. 31 – PAGE 224

O. RESOLUTION APPOINTING A MEMBER TO THE RECREATION BOARD

Vice-Mayor Davis, Chair of the Boards & Commissions Committee, said that we closed the application deadline prematurely and recommended that these vacancies continue to be advertised so that Council will have the opportunity to interview more candidates. It was the consensus of Council to support Vice-Mayor Davis' recommendation.

P. ORDINANCE NO. 3632 - BUDGET AMENDMENT FOR CLAIMS SETTLEMENT FOR THOMPSON/BROWN VS. CITY OF ASHEVILLE

Summary: The consideration of a budget amendment, in the amount of $1, 500,000, to settle the claim of Thompson/Brown vs. City of Asheville.

On December 20, 2005, Asheville Police officers were involved a pursuit of a vehicle that turned the wrong way down an exit ramp from Fairview Road onto I-40 West, colliding with a van traveling west on I-40. The driver of the van died in the collision and his passenger was severely injured. The driver of the vehicle being pursued also died in the collision. The estate of the van driver and the injured passenger have sued the City claiming that the City acted improperly in carrying out the pursuit, and that this was the proximate cause of the accident. The City has denied these allegations. At pretrial mediation, settlement was agreed to, with the insurers for all parties contributing. Because the City's share of the settlement exceeds the settlement authority of the Asheville Claims Corporation, City Council approval of it was required and the amount requires an adjustment to the budget.

The Asheville Claims Corporation settles claims against the City of Asheville. This action complies with the City Council Strategic Operating Plan – Sustainability, in that fund balance exists to be used for this type situation.

Pros:

- Settlement has been reached with the plaintiff's.
- This settlement will release the City from future liability.
- City pursuit policies and application of policies have been reviewed and amendments have been proposed.
- Settlement would be made under City's actual damages administrative policy. Facts and law specific to this case have been reviewed by City Staff and City Council. Payment is not a waiver of governmental immunity.

Con:

- The Liability Claim Fund balance will have a net decrease of $500,000.

The fiscal impact is that $1,500,000 will be appropriated from the liability fund balance. The City is self-funded up to $500,000 per claim for liability claims arising against the City. The Asheville Claims Corporation mitigates and settles all claims for the City of Asheville. The Asheville Claims Corporation purchases a reimbursement policy for any claims that exceed the City's self-funded amount; therefore the net affect to the liability fund balance will be $500,000 for FY 2007-08. Based on the most recent actuarial recommendation, the fund balance will remain healthy to pay future claims.

The Asheville Claims Corporation requests that the City Council adopt a budget amendment in the amount of $1,500,000 for claims settlement for Thompson/Brown vs. City of Asheville.

Councilman Mumpower said that even though we are not admitting guilt and providing some support for injured parties, this settlement results in significant loss of dollars to the City and he has trouble funding something that we really don't think we did anything wrong in.

Councilwoman Cape said that the City pays insurance for different reasons and this money is going to the families who are part of our community and who have been victims of a very tragic situation. She felt we are looking at a good risk management decision.

Councilman Newman moved for the adoption of Ordinance No. 3632. This motion was seconded by Councilwoman Cape and carried on a 5-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 24 – PAGE 511

III. PRESENTATIONS & REPORTS:

A. AFFORDABLE HOUSING TASK FORCE RECOMMENDATIONS

Ms. Robin Merrell, Senior Housing Attorney at Pisgah Legal Services, reviewed with Council the Affordable Housing Plan. She introduced the members on the Affordable Housing Task Force.

The Task Force started looking at the current state of affordable housing. The City of Asheville affordable housing programs and policies address affordable housing as follows: federal grants, homeless initiative, Housing Trust Fund, Fee Rebate Program and Unified Development Ordinance.

Using a chart, she said many Asheville households are financially unstable. Although the cost of living continues to increase, wages stay the same.

The Task Force then looked at subsidized housing. There is not enough information available to the community about the housing options in Asheville. There are not enough rental assistance vouchers or assisted units. There are not enough efficiency and 1-bedroom assisted units. Many subsidized housing structures are in disrepair and need to be redeveloped.

Another subcommittee of the Task Force looked at benchmarks and best practices. The housing needs of every community are as unique as the people who live there. Housing starts across the nation are low. In Asheville the housing market continues to build and rebuild. Asheville builds up, Asheville builds green, and Asheville builds luxury. Asheville does not build affordable. To address the affordable housing needs in Asheville, the Task Force agreed that the

City should use its existing zoning structure to grant incentives and make construction profitable to developers building "higher" density mixed-use and mixed-income developments.

Common affordable housing best practices not adopted include (1) mandatory inclusionary zoning – The Task Force does not support this strategy; (2) voluntary inclusionary zoning – The Task Force supports this concept, but only if it is incentive-based; (3) form-based zoning – The Task Force supports the concept of expanding the number of allowable uses as long as you can "build it and park it."; and (4) community land trusts – The Task Force agrees that absolute homeownership is not always the appropriate choice for many households and families, but does not feel that a city-sponsored community land trust is the best solution.

On June 4, 2008, the Task Force unanimously agreed to submit 33 recommendations to the City Council. Their recommendations may be summarized into five categories: (1) Match housing resources to housing needs; (2) Modify codes and programs to increase the affordable housing supply; (3) Implement new initiatives to increase the affordable housing supply; (4) Educate all stakeholders; and (5) Support community initiatives and collaborations that further affordable housing.

To match housing resources to housing needs, we must meet the demand for affordable housing. Community resources include the Housing Trust Fund; state and federal grants; Housing Choice Vouchers; Fee Rebate Program; the Minimum Housing Code; and rental and homeownership counseling programs. Community goals include (1) build 500 affordable housing units a year for the next 25 years. At least 75% of these units should be renter-occupied; and (2) rebuild our existing subsidized housing stock in the form of mixed income developments, but maintain the overall number of subsidized units.

Regarding community initiatives and collaborations, the City of Asheville does not stand alone. Partnerships and collaborations include existing and future employees; housing services agencies; financial service agencies; human services and agencies; real estate agents; developers; Buncombe County; and Housing Authority of the City of Asheville. New initiatives include Earned Income Tax Credit Program; Employer Assisted Housing Collaborative; Support Programs for Financial Stability; and Create and maintain a housing website.

Regarding educating the community – protecting the public interest, (1) the first step is to address the problem of affordable housing through a series of meaningful policy changes complemented with public education and awareness campaigns; and (2) community partnerships to offer a continuum of housing services.

Regarding changes in existing policies in City ordinances – increase the supply of affordable housing (1) allow residential projects under 50 units as a use by right subject to special requirements; (2) allow duplexes, triplexes and quad lexes in single-family districts as a use by right subject to special requirements in all Asheville neighborhoods; (3) allow maximum number of 12-16 units if at least two of the units are cottage duplexes in the Cottage Development Code; (4) allow for more residential and mixed-use structures in urban areas through reduced parking requirements; (5) reserve money paid for City-owned land in the Housing Trust Fund; (6) reserve 20% of the Housing Trust Fund for transitional housing; (7) require that affordable housing built through City programs remain affordable; and (8) require affordable housing built through City programs to be "affordable" based on occupants income and not through a maximum sales price.

Recommendations that will produce the most affordable housing units:

(1) Allowing density bonuses for structures with 20-50 units – Allowing more structures with more units is the most immediate and least expensive to increase the supply of affordable housing in the City of Asheville and will maximize the use of limited available land and infill lots.

(2) Transportation Corridor Overlay District – Applying a Transit Corridor Overlay is a great way to align Asheville's growth with our community values. To concentrate growth the City can target density bonuses and grant additional incentives to develop affordable housing units as part of a mixed-use or mixed-income development, and stimulate infill development or redevelopment. This overlay district would also allow the City to offer incentives for development that furthers other City goals, such as sustainable development and the use of transit. The Transit Corridor Overlay will encourage development that is (1) on the existing public transit line, (2) close to jobs, (3) sustainable and (4) affordable without disturbing well-established neighborhoods.

(3) Tax Increment Financing (TIF) – TIF is a responsible growth tool that allows the City to encourage development in areas not likely to redevelop on their own without raising taxes. The cost for the City to provide infrastructure and make public improvements is paid for by the increased tax value of the property. Lessons from our neighbors: The Woodfin Town Center Redevelopment Project. After the town uses the increased tax value to fulfill its bond obligation, the 230 acres that were formerly landfill will generate the town an incredible amount of revenue. The project includes over 500 houses units and over 160,000 sq. ft. for commercial use.

(4) Public Bond – (1) By combing multiple public goals into a bond referendum, the City can generate funds and support affordable housing, open space and parks, and infrastructure improvements; and (2) Bonds produce large amounts of revenue. The reason for combining affordable housing with other goals is to increase the likelihood a referendum would be supported by voters, and to encourage mixed-use development.

She said the Task Force recognizes this is the beginning and they are asking Council to create an advisory committee to continue work and evaluate, refine and monitoring implementation. Several Task Force members and other members of the community are willing to serve.

Vice-Mayor Davis thanked the Task Force for their work on this issue, noting that there are a lot of things that have merit, but will take time to implement. He felt that our Housing & Community Development Committee be given the time to work with staff on implementation and further analysis of each recommendation.

Vice-Mayor Davis moved to accept the report. This motion was seconded by Councilwoman Jones.

Councilman Mumpower noted that there are several vacant units in public housing because people don't feel safe. He questioned how we can manage affordable housing and not have the reduction of crime as a central point, which was not mentioned in the report.

Councilman Newman thanked the Task Force for their work and felt this is a substantive report that will serve us well on how to tackle this important challenge over the coming years. He felt there are a lot of recommendations and it will take time to sort through them to determine how they should be prioritized.

Councilwoman Cape felt the Task Force put in a lot of time and thanked the Task Force for their efforts. She looked forward to the report going back to the Housing & Community Development Committee and being able to vet some of the suggestions and see how they fit in. She felt the Transit Corridor Overlay has huge merits on many levels. She asked Councilman Mumpower to help her understand how she can work with him to get support from the state on our court system.

Mayor Bellamy thanked Council for approving the creation of this Task Force - that says a lot about what we want in our community. She thanked not only the Task Force, but members of the community who were actively engaged in this process. She felt the Task Force looked

beyond their particular interests and focused on the bigger impact of the community. The Task Force completed their charge, which was basically looking at the existing City's policies and procedures, and recommending new policies and procedures that are needed. Even though the Housing & Community Development Committee would like further review of the recommendations, she liked the idea of having an oversight committee, in that it worked well with the 10-Year Plan to End Homelessness and the Pritchard Park Committee. Stakeholders made a commitment to see the plans implemented. If we are going to be a truly affordable community it shouldn't matter who initiates the recommendations. Our community is worthy of having leaders and community members who are willing to work together to understand the greater good for our community.

Councilman Mumpower said that he voted against the motion to spend $50,000 for a consultant for this process. He didn't believe it was for this Council to design that plan and one would assume on the basis of that investment that we would have a comprehensive plan that would address the core issues that affect affordable housing. He felt crime is a major issue on that equation.

Mayor Bellamy said the Police Chief was instructed to develop a comprehensive plan to address crime in our community which should dovetail into this plan. She felt an addendum to this plan should come from the Police Chief and how his staff can assist with the creation of safe, affordable housing.

The motion made by Vice-Mayor Davis and seconded by Councilwoman Jones to accept the report carried unanimously.

Upon inquiry of Mayor Bellamy, Councilwoman Cape felt she wanted to understand the role of the oversight committee and how it will function in relationship to the Housing & Community Development Committee.

Ms. Merrell said that the Task Force would be open to discussion with Council on what form the oversight committee would take and its official role.

Councilwoman Cape suggested a conversation be held with the Housing & Community Development Committee first before an oversight committee is established.

Vice-Mayor Davis recommended a proposal be prepared by the Task Force and that it be taken to the Housing & Community Development Committee. After that Committee gains consensus, then it can be taken to the Boards & Commissions Committee which will follow-up with a resolution. That resolution can then be brought before the full Council for consideration.

In response to Councilwoman Jones, Ms. Merrell said the Task Force would welcome the City starting to implement what recommendations they feel comfortable with while they work on a proposal for the oversight committee.

Mayor Bellamy noted that the Task Force will prepare a proposal on the oversight committee for the Housing & Community Development Committee.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER AN ORDINANCE TO PERMANENTLY CLOSE A RIGHT-OF-WAY FORMERLY KNOWN AS EAST SCHENCK CRESCENT

RESOLUTION NO. 08-140 - RESOLUTION TO PERMANENTLY CLOSE A RIGHT-OF-WAY FORMERLY KNOWN AS EAST SCHENCK CRESCENT

Mayor Bellamy opened the public hearing at 6:18 p.m.

Director of Public Works Mark Combs said that this is the consideration of a resolution to permanently close a right-of-way formerly known as East Schenck Crescent. This public hearing was advertised on May 30, June 6, 13 and 20, 2008.

N.C. Gen. Stat. sec. 160-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, Biltmore Farms Inc. has requested the City of Asheville permanently close a portion of East Schenck Crescent. This closure will allow East Schenck Crescent to be re-aligned for better traffic flow at the intersection with Schenck Parkway.

Public Works Department staff has researched and contacted all agencies and the Greenway Commission and determined this closure will not affect adjoining property owner's means of ingress and egress and will improve traffic flow.

This action complies with the Asheville City Development Plan, Land Use and Transportation, providing interconnectivity of roadways and land use development.

Pro:

- The closure allows the property to be used to its maximum potential by adjacent property owners.

Con:

- In consideration of the location of the portion of East Schenk Crescent, staff can find no potential challenges regarding the closure.

City staff recommends the adoption of the resolution to permanently close a portion of East Schenck Crescent.

Mayor Bellamy closed the public hearing at 6:20 p.m.

Mayor Bellamy said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Mumpower moved for the adoption of Resolution No. 08-140. This motion was seconded by Councilwoman Jones and carried unanimously.

RESOLUTION BOOK NO. 31 – PAGE 235

B. RESOLUTION NO. 08-141 - RESOLUTION TO ACCEPT EAST SCHENCK CRESCENT AS A CITY-MAINTAINED STREET IN THE BILTMORE PARK TOWN SQUARE AREA OF SOUTH ASHEVILLE

Assistant Director of Transportation and Engineering Ken Putnam said that this is the consideration of a resolution to accept East Schenck Crescent, in the Biltmore Park Town Square area of south Asheville, as a City-maintained street in the Biltmore Park Town Square area of south Asheville.

Section 7-15-1 (e) (4) (a) of the Code of Ordinances requires that streets dedicated for public uses be accepted by resolution of the City Council. The developer submitted a written request via e-mail message on April 16, 2008, asking the City to accept East Schenck Crescent as a city-maintained street.

East Schenck Crescent is a developer-constructed street beginning at Schenck Parkway and ending at Columbine Road that has as average width of 30 to 37 feet and a length of 0.11 mile. The proposed 34 to 41-foot right-of-way is measured from back of curb to back of curb; therefore, the City of Asheville is only responsible to maintain the street including the curb and gutter sections on both sides of the street. The City of Asheville is not responsible to maintain anything outside of the 34 to 41-foot right-of-way including the existing sidewalk along the east side of the street.

Transportation and Engineering Department staff and Public Works Department staff inspected this street and determined that it was constructed according to current standards as indicated in the City of Asheville's Standard Specifications and Details Manual.

Following City Council's approval of this resolution, East Schenck Crescent will be added to the official City Maintained Street Inventory (Powell Bill List).

Pros:

- The City of Asheville will receive Powell Bill Funds from the North Carolina Department of Transportation (NCDOT) to help fund the maintenance of the street.
- Commercial development constructed along the subject street increases the tax base for the City.
- The street provides connectivity between a commercial area and a residential community.

Con:

- Powell Bill Funds will not cover 100% of the total cost to maintain the street.

There will be no initial financial impact to the City, although the responsibility of maintenance will belong to the Public Works Department. The City will receive Powell Bill Funds in the future to help maintain the street. Currently, the Powell Bill Funds equate to $1,886 per mile compared to the City's maintenance cost of $8,200 per mile.

Staff recommends that City Council accept East Schenck Crescent as a city-maintained street.

Mayor Bellamy said that members of Council have previously received a copy of the resolution and it would not be read.

Councilman Mumpower moved for the adoption of Resolution No. 08-141. This motion was seconded by Councilwoman Jones and carried unanimously.

RESOLUTION BOOK NO. 31 – PAGE 237

C. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING FOR THE PROJECT IDENTIFIED AS HUNT HILL, LOCATED AT 54, 56 AND A PORTION OF 55 HUNT HILL PLACE FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT AND INSTITUTIONAL DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/ CONDITIONAL ZONING, WITH A DENSITY BONUS, FOR THE DEVELOPMENT OF A 180 UNIT MULTI-FAMILY RESIDENTIAL PROJECT

ORDINANCE NO. 3633 - ORDINANCE TO CONDITIONALLY ZONE A PROJECT IDENTIFIED AS HUNT HILL, LOCATED AT 54, 56 AND A FORTION OF 55 HUNT HILL PLACE FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT AND INSTITUTIONAL DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/

CONDITIONAL ZONING, WITH A DENSITY BONUS, FOR THE DEVELOPMENT OF A 180 UNIT MULTI-FAMILY RESIDENTIAL PROJECT

Mayor Bellamy noted that Public Hearings B and C would be discussed together.

Mayor Bellamy opened the public hearing at 6:21 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to conditionally zone a project identified as Hunt Hill, located at 54, 56 and a portion of 55 Hunt Hill Place from RM-8 Residential Multi-Family Medium Density District and Institutional District to RM-16 Residential Multi-Family High Density District/Conditional Zoning, with a density bonus, for the development of a 180 unit multi-family residential project. This public hearing was advertised on June 13 and 20, 2008.

The City of Asheville is a party to the consideration of this rezoning as they are considering a land exchange of City park property (part of Mountainside Park) for some of the developers existing land. The City's property is zoned Institutional and is 1.0592 +/- acres in size. The property to be allocated to the City of Asheville is .85 +/- acres in size. The developer has agreed to pay additional consideration for the acreage difference.

In addition to the conditional zoning request, the applicant is requesting a density bonus of 17.6% (27 units) to result in a project comprised of a total of one-hundred ninety (180) units. Without any rezoning, land exchange, or density bonus, the developer could construct approximately seventy-four (74) units on the property. [NOTE: The plan sheet dealing with steep slope calculations erroneously listed the number of units at 190. The requested number of units is 180].

The developer is also requesting a modification to the required setback on the east side of the property for the easternmost building on the site. The required setback is forty (40) feet. They are requesting a rear setback of twenty (20) feet – a modification of twenty (20) feet. They will still be able to provide the required twenty (20) foot buffer along that rear property line. They are also requesting a height modification of 5 feet 6 inches for Building B. Although this building is the same height as the others, because of the topography of the site and the point of fire access to that building, the modification is necessary. Staff is supportive of both of these modifications.

The subject property, 9.58 acres, is located within the city limits off of Hunt Hill Place and Ardmlon Park Road. The current address for these properties is 54, 55, and 56 Hunt Hill Place. The property is primarily the former location of the McCormick Heights Apartments (under demolition). The project site also includes some City of Asheville property. The acreage shown anticipates a land exchange with the City. If the proposed land exchange goes through, the development would receive 1.06 acres of currently unused park property (part of Mountainside Park) and the City would receive .85 acres for future park development along with additional consideration.

The property in question is zoned RM8 and Institutional (the City of Asheville property). To the north properties are zoned RM8, Institutional and RS8 and contain single-family residences and parking for a place of worship. Properties to the east are zoned RS8 and Institutional and are vacant. Properties to the west are zoned Institutional and RM8 and contain a City of Asheville facility and single-family homes. Properties to the south are zoned Institutional and contain a public park.

The applicant, Steve Moberg, is requesting conditional zoning of these 9.58 acres. The request is for conditional zoning to RM16 (Residential Multi-Family High Density District) to allow for the development of a 180-unit residential community. The proposal is for a mix of efficiency, one-, two-, and three-bedroom condominiums to be housed in four buildings. The number of

units per building ranges from 61 in Building A (the westernmost building) to 27 in Building D (the easternmost building). Access to the development will be via existing access points to the property off of Ardmion Park Road and Hunt Hill Place. Access to buildings A and B will be via Hunt Hill Place. Access to Buildings C and D will be via Ardmion Park Road.

A portion of the property (2.19 acres) is in Zone A of the City's Steep Slope Regulations. Under the regulations, the allowable number of units in the Zone A portion if it is rezoned to RM16 is 24 units. The allowable density for the remainder of the project site (if rezoned) is one hundred and twenty-nine (129) units. Therefore, a total density of 153 would be allowed with a rezoning to RM16. The developer is proposing a project of 180 units.

The total proposed density for the project is approximately 18.8 units per acre. This density will necessitate an exceptional development density bonus of 27 additional units (a 17.6% bonus). The developer is proposing that ten percent (10%) of the units in the project be affordable and has begun discussions with the City's Community Development office on the affordable units. The developer has committed to 10 two-bedroom and 8 efficiency affordable units. The developer has also provided a plan with the submittal which outlines the site features, in addition to the provision of affordable housing, that qualify the project as an "exceptional development". These features include: enhanced stormwater management systems through the use of bio-retention stormwater systems; the provision of walking trails and pedestrian amenities; designing a building orientation sensitive to the surrounding neighborhood (limited surface parking and avoiding steepest portions of the property); and, enhanced landscaping in areas where not required. Finally, the developer has committed to meeting NC Healthy Built Home standards in the construction of the project. [ASIDE: The developer has also stated his commitment to work with the City of Asheville on improvements on adjoining parkland depending on the City's parks and recreational needs. The Planning and Zoning Commission had recommended that this commitment be detailed prior to this matter coming to the City Council. The developer has had discussions with Parks and Recreation staff and it is felt at this time that the commitment should be general in nature.]

The applicant is seeking a modification to the setback on the east side of the property for the easternmost (and smallest) building on the site. The required setback is 40 feet. They are requesting a rear setback of 20 feet – a modification of 20 feet. They will still be able to provide the required 20-foot buffer along that rear property line. Staff is supportive of this modification with the provision that the plantings meet the plant material sizes required when grading in the buffer area. They are also requesting a height modification of 5 feet 6 inches for Building B. Altnough this building is the same height as the others, because of the topography of the site and the point of fire access to that building, the modification is necessary. Staff is supportive of this modification as well.

At a meeting on April 21, 2008, the City of Asheville Technical Review Committee (TRC) reviewed the conditional zoning request and made a positive recommendation (with conditions) that the project be forwarded to the Asheville Planning and Zoning Commission. The developer has resubmitted since that time, addressing the bulk of the conditions.

At a meeting on May 7, 2008, the Planning and Zoning Commission unanimously (5-0) recommended this project to the Asheville City Council with conditions. Only one person spoke on the issue concerned about affordable housing. It was also recommended that details on the price points for the other units be examined by staff and Asheville City Council. The developer has provided information showing that the price points in Building A are approximately $200 per square foot. This is in contrast to the current average in the 28801 area (this of course, includes downtown, which must be taken into account) is $377.25.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use

permits set out in section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   The project, if approved, must meet all the technical standards set forth in the City's Unified Development Ordinance and Standards and Specifications Manual. The developer has been working closely with City staff to ensure compliance.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
   The developer is citing the buildings for this project utilizing the areas that were paved or built upon for the previous complex on this site. They are in compliance with the City's steep slope regulations and are placing most parking within the buildings to limit impervious surface.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
   The project site abuts institutional facilities and parkland and should provide an appropriate transition to the also adjacent single-family homes. They are proposing buffering and other enhanced landscaping which should improve the site which has little vegetation now. They are working to retain existing vegetation where significant and possible.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
   The proposed project does show a residential development with greater density than found in the surrounding area. However, its proximity to an active recreation facility makes this an appropriate transition to less dense housing in the area. The project site previously served as a 100 unit housing community of seventeen (17) two-story buildings.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
   The proposed use supports the 2025 goals and Council vision as follows:
   a. Supports the goal of pursuing compatible infill development.
   b. Supports the goal of promoting the use of green building techniques.
   c. Supports the goal of permitting more intense development and density in areas with appropriate infrastructure.
   d. Supports the goal of providing affordable housing.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
   The use as proposed has two means of access to two portions of the project which makes the traffic less concentrated through the existing neighborhood. Transit access is only a block away on Martin Luther King, Jr. Drive. TRC raised no concerns over the provision of services except that the Water Resources Department is looking into whether any off site improvements will be required to the waterlines in the vicinity of this project. This will be addressed in the required water system extension plan review.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
The developer was not required to submit a traffic impact study. The traffic engineer has reviewed the project and all concerns have or are being addressed.

Pros:

- This project supports the City of Asheville's goal of pursuing higher density infill development.
- This project proposes a minimum affordable housing component of ten percent or 18 units.
- The project is designed to meet NC Healthy Built standards.

Cons:

- The project is denser than surrounding residential development.
- Access to the project is via two small single-family residential streets.
- The development will contain 106 units more than would be allowed under the current zoning for the developer's property.

At a meeting on May 7, 2008, the Planning and Zoning Commission unanimously (5-0) recommended this project to the Asheville City Council with conditions. Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable with the modifications requested and with the standard conditions and the conditions as follows: (1) A minimum of 10% of the units for the project will be affordable per the City of Asheville's Community Development Division; (2) Enhanced landscaping will be provided in the form of providing the equivalent of a Type A buffer along the properties where zoning does not require such a buffer; (3) Buffer materials in the setback modification area shall be 50% larger than otherwise required; (4) The project will be designed to meet NC Healthy Built standards; and (5) contingent on the land exchange.

At this time, Real Estate Manager Nikki Gunter explained the land exchange (Public Hearing D).

Mr. Steve Moberg, developer, spoke in support of the project in that it will be an affordable project. There is quite a large workforce in that area that works downtown. They were able to keep the prices low. He explained some of the green and stormwater features in the project. He hoped that Council would approve the land swap. They will work with the Parks & Recreation Department in developing a future park with monetary funds as well as in-kind services. They hoped the project would bring in about a $40-50 Million tax base to the City when all the units are sold. They worked hard to incorporate 10% of affordable housing in this project, in that he can still maintain keeping the other units affordable.

Mr. Jesse Junior spoke against the project in that Asheville is being over-developed.

Mayor Bellamy closed the public hearing at 6:38 p.m.

Councilwoman Cape felt this Council is charged with helping build a town for people to live and work. She felt this area is in a location of where some of our biggest employers are located (Mission Hospitals, City of Asheville and Buncombe County) and is at a price point where people can live and walk to work. She suggested the potential owners are made aware of the loud speakers when the baseball games begin at McCormick Field.

City Attorney Oast said that if Council approves the resolution directing the City Clerk to publish a notice on the land exchange, Council will be voting on that exchange on July 22. This zoning does not bind Council with respect to the exchange of property.

Councilman Mumpower felt that if people own property, they have a right to develop it. He felt that this is a good project, but due to crime and drug activity we lost what was truly an affordable housing development there because people didn't feel safe living there.

Mayor Bellamy agreed that we lost truly affordable housing in that neighborhood. She felt that 10% set aside for affordable housing, with a negotiated land swap, was too low. She felt this is an opportunity for a good affordable housing development with more truly affordable housing units. She asked the developer to consider a couple more affordable units as the plan is being developed in that there are working people who were displaced and who would like to come back to that community. She noted that other developers have made 10% of their units affordable and they didn't get anything from the City. She asked the developer for consideration of more than 10% of affordable housing units. She felt this is going to be a good development for our community, but it would be a good way to reach out to the community and neighborhood to have more than 10% affordable units.

In response to Councilman Mumpower, Mayor Bellamy said that there is a precedent for Council to ask for changes, citing the Habitat for Humanity development.

Mr. Moberg said that he would love to add more affordable units; however, in doing so it raises the price of his other units. In this economy today, he still has to maintain his units at a lower price to get sales generated. He said he would do what he could and would report back at the meeting when Council would consider the land exchange.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Newman moved for the adoption of Ordinance No. 3633, to conditionally zone a project identified as Hunt Hill, located at 54, 56 and a portion of 55 Hunt Hill Place from RM-8 Residential Multi-Family Medium Density District and Institutional District to RM-16 Residential Multi-Family High Density District/Conditional Zoning, with a density bonus of 17.5%, a 20% modification to the setback on the east side of the property, and a height modification of 5 feet 6 inches for Building B, subject to the following and standard conditions: (1) A minimum of 10% of the units for the project will be affordable per the City of Asheville's Community Development Division; (2) Enhanced landscaping will be provided in the form of providing the equivalent of a Type A buffer along the properties where zoning does not require such a buffer; (3) Buffer materials in the setback modification area shall be 50% larger than otherwise required; (4) The project will be designed to meet NC Healthy Built standards; (5) contingent on the land exchange; (6) The project shall comply with all conditions outlined in the TRC staff report; (7) All site lighting must comply with the City's Lighting Ordinance and be equipped with cut-off fixtures or full cut-off fixtures and directed away from adjoining properties and streets. A detailed lighting plan will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (8) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (9) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; and (10) This project will undergo final review by the TRC prior to issuance of any required permits. This motion was seconded by Councilwoman Jones and carried on a 5-1 vote, with Mayor Bellamy voting "no."

ORDINANCE BOOK NO. 24 – PAGE 513

D. RESOLUTION NO. 08-142 - RESOLUTION AUTHORIZING THE CITY CLERK TO PUBLISH A NOTICE REGARDING THE INTENT TO AUTHORIZE THE EXCHANGE OF REAL PROPERTY LOCATED ON HUNT HILL PLACE FOR PROPERTY LOCATED ON ARDMION PARK PLUS ADDITIONAL MONETARY CONSIDERATION

Real Estate Manager Nikki Gunter said that this is the consideration of a resolution to authorize the City Clerk to publish a notice regarding the intent to authorize the exchange of real property located on Hunt Hill Place for property located on Ardmion Park plus additional monetary consideration.

The City of Asheville and Satchel's Development, Inc. have negotiated an exchange of real property at Hunt Hill Place for property on Ardmion Park Road along with additional monetary consideration.

The City-owned property on Hunt Hill Place is 1.0592 acres +/- in size and is a portion of tax PIN 9648.07-57-5714 and a portion of tax PIN 9648-11-57-5224. The area is zoned Institutional and is mostly vacant land. This area is a portion of the larger Mountainside Park. The appraised value, as appraised by Underdown Ball & Associates, LLC, equals $130,300.

The property to be exchanged on Ardmion Park Road is an 0.854 +/- acre parcel zoned RM 8 and is a portion of tax PIN 9648.07-57-9853. This property is mostly wooded with steep to rolling grades and has road frontage on Ardmion Park Road. The appraised value as appraised by Underdown Ball & Associates, LLC, equals $120, 900. To provide that the exchange is full and fair, monetary compensation will be provided along with the exchange in the amount of $9,400 in cash, paid by the property owner, Satchel's Development, Inc.

The Phase 1 Environmental Site Assessment of the Ardmion Park parcel has been reviewed by staff and no documented evidence of any environmental incidents on the property was noted. The Parks Advisory Board has reviewed the proposed exchange and found that the exchange is appropriate for the parks and greenways system. Approval of the resolution will initiate the exchange of the properties through the process provided in N.C.G.S. 160A-271.

This action complies with the City Council's Strategic Operating Plan in that it promotes sound land management per the Parks and Recreation Master Plan.

Pros:

- The exchange will be a fair exchange of property for property plus consideration.
- Additional pedestrian access to the Mountainside Park will be gained from Ardmion Park Road.

Con:

- There is no negative impact.

The proceeds from the sale of this parcel will benefit the General Fund via the Parks, Recreation and Cultural Arts Department.

City staff recommends City Council adopt a resolution authorizing the City Clerk to publish a notice regarding the intent to authorize the exchange of real property located on Hunt Hill Place for property located on Ardmion Park Road and additional consideration.

Mayor Bellamy said that members of Council have previously received a copy of the resolution and it would not be read.

Councilwoman Cape moved for the adoption of Resolution No. 08-142. This motion was seconded by Councilman Mumpower and carried on a 5-1 vote, with Mayor Bellamy voting "no."

RESOLUTION BOOK NO. 31 – PAGE 239

E. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING FOR THE PROJECT IDENTIFIED AS SILVERMAN'S MIXED-USE DEVELOPMENT, LOCATED AT 48 SWANNANOA RIVER ROAD FROM RIVER DISTRICT AND

INSTITUTIONAL DISTRICT TO URBAN PLACE DISTRICT/CONDITIONAL ZONING, FOR THE DEVELOPMENT OF A MIXED-USE PROJECT

ORDINANCE NO. 3634 - ORDINANCE TO CONDITIONALLY ZONE A PROJECT IDENTIFIED AS SILVERMAN'S MIXED-USE DEVELOPMENT, LOCATED AT 48 SWANNANOA RIVER ROAD FROM RIVER DISTRICT AND INSTITUTIONAL DISTRICT TO URBAN PLACE DISTRICT/CONDITIONAL ZONING, FOR THE DEVELOPMENT OF A MIXED-USE PROJECT

Mayor Bellamy opened the public hearing at 6:51 p.m.

Urban Planner Alan Glines said that this is the consideration of an ordinance to conditionally zone a project identified as Silverman's mixed-use development located at 48 Swannanoa River Road from River District and Institutional District to Urban Place District/Conditional Zoning, for the development of a mixed-use project consisting of 125 residential units, 26,000 square feet of retail/grocery space and 7,500 square feet of storage space for residents, along with a setback modification. This public hearing was advertised on June 13 and 20, 2008.

Mr. Glines said that this project is located at 48 Swannanoa River Road on four parcels totaling 5 acres. The property is zoned River and is subject to flood hazard requirements that govern development in this area. The proposal seeks conditional zoning to Urban Place District along with the project master plan. The plan includes:

- Up to 125 residential units and about 26,000 square feet of commercial space including a grocery store.
- The project is made up of separate buildings forming two wings with residential units along the east and west ends of the property.
- A grocery store planned for the project is a separate structure and forms the center of the development.
- The roof area above the grocery store (totaling around 5,000 square feet) will be used as an outdoor gathering / open space for residents and for an occasional community event.
- The occupied areas of the project (residential and commercial) are elevated out of the 100 year flood hazard area as required by City ordinance. The Urban Place District anticipates this building pattern and encourages pedestrian connectivity from the street through steps and boardwalks which are provided in the project.
- The residential portion of the project will be made up of 54 one-bedroom units, 58 two-bedroom units and 13 three-bedroom units located on the upper floors of the east and west wings.
- Parking for the site is proposed for the ground level area under the buildings and the first elevated level of the structure.
- The height of the buildings will be six stories counting the ground level garage parking. The structures will be within the Urban Place height maximum of 80 feet.
- The project will be seeking Energy Star and Healthy Built for the residential units and will seek LEED certification although it is unclear if the project will be accepted in the program due to its location.
- The buildings will include photo voltaic awnings to 'net meter' and sell energy back to the power company using clean solar technologies and also highly insulated exterior finish panels for energy efficiency.
- The project will support the goals of affordability by providing 10% of the units at an affordable price meeting City of Asheville standards. Most of the other units will be targeted to the workforce housing market. A small number of the units will be higher-end units.

- The site was recently accepted in the NC Brownfields Study Area to identify potential environmental contaminants if any, located on the property. The Land of Sky Regional Council manages that program for the City.

Access to the project will be from Swannanoa River Road and from Caledonia Road. The Technical Review Committee (TRC) members cautioned against making Caledonia Road the only access road for the grocery store deliveries to avoid staging problems in the street and other potential impacts. Cross access east to west through the site was recommended to solve this problem and provide better fire department coverage. The design team revised the plan and project operations to accommodate the request. TRC staff also noted that commercial traffic would be inappropriate along Caledonia Road past the project site but this should not be a problem since the tight street geometries will discourage cut-through traffic. The anticipated traffic from the subject project is estimated to be 126 vehicles per hour during the morning peak hour and 422 vehicles per hour during the afternoon peak hour. Since this traffic exceeds the threshold of 100 vehicles per hour, a traffic impact study was required. The area of influence included analyzing three intersections in the immediate area of the site plus the three proposed access points *(two along NC 81 and one along Caledonia Road)*. Due to the location of the site, most of the traffic will use NC 81 (Swannanoa River Road) to access *(ingress and egress movements)* the project when it is completed. Very little, if any, cut-through traffic through the Kenilworth neighborhood should occur.

The traffic impact study determined that the anticipated traffic from the subject project at full build-out should not place an undue burden on the existing street infra-structure. The study did suggest certain mitigation improvements including left and right-turn lanes along NC 81 (Swannanoa River Road), traffic signal timing revisions at the signalized intersection of SR 3214 (Biltmore Avenue) and NC 81 (Swannanoa River Road)/SR 3556 (Meadow Road), two egress lanes along Caledonia Road at its intersection with NC 81 (Swannanoa River Road), and two egress lanes at the two proposed access points along NC 81 (Swannanoa River Road). The proposed interconnectivity that is now being included should minimize the adverse impact of delivery trucks solely using Caledonia Road to gain access to the site by providing options that could be made mandatory.

Although the City of Asheville agrees with the mitigation improvements as indicated in the traffic impact study and the updated technical memorandum dated June 6, 2008, the North Carolina Department of Transportation has the final approval for the mitigation improvements along NC 81 (Swannanoa River Road) since it is a state-maintained street. If cut-through traffic becomes an issue, then other mitigation improvements could be imposed including the prohibition of left turns from the site onto Caledonia Road and converting the proposed access point onto Caledonia Road from two-way operation to one-way (ingress) operation. Trucks are already prohibited from using Caledonia Road to gain access into the Kenilworth neighborhood.

Some Kenilworth residents have shared concerns that additional traffic will be added to neighborhood streets, a trend that they say is already happening at certain times of the day as Swannanoa River Road backs up at certain intersections. As mentioned in the traffic study, signal timing revisions should mitigate this situation.

The Wilma Dykeman Riverway Master Plan (*Dykeman Plan*), a vision plan document for future redevelopment of the French Broad and Swannanoa Rivers through the City of Asheville was adopted by City Council in July 2004. The *Dykeman Plan* at its core is a multi-modal transportation plan to consolidate access into and through the river areas. Swannanoa River Road and Thompson Street are proposed to become a one-way pair that will require additional bridges crossing the Swannanoa River. Roadway and greenway system improvements are the base of the plan, but there are a number of other important goals: protecting water quality and consideration for the special nature of the floodplain, strengthening a diverse economic base and expanding opportunities for artists and small business development, additional park development, sustainable mixed-use buildings with residential units on upper floors, and regional attractions at

suitable locations. In order to propel implementation of the *Dykeman Plan* goals, the River District Design Review Committee (RDDRC) was instrumental in 2006 to begin discussions to rezone certain River District parcels to Urban Place District. A public meeting was held for property owners to review the plan and to discuss the idea. The property owners were generally supportive of the changes so long as the effort was voluntary in order to allow the natural transition from industrial uses to mixed-use development. All agreed for the need to accommodate new uses while maintaining opportunities for the existing uses, recognizing that the special character of the River District is enhanced by the rich and historic mix of uses. In February 2007, twelve parcels located in the River District including five located across the river from the Silverman site were rezoned to Urban Place District. The Silverman Mixed-use proposal was reviewed by the RDDRC in 2008 for design and layout of the proposal. The RDDRC enthusiastically approved the design and endorsed the proposal noting that this type of project is envisioned in the *Dykeman Plan*.

The development team is seeking a side-street building setback modification because the setback exceeds 15 feet along Caledonia Road. The building provides frontage along Swannanoa River Road and meets the corner at Caledonia Road. As the road curves away into the neighborhood, the building setback expands to 45 feet. In spite of River and Institutional District zoning along portions of Caledonia Road, the residential character of the street is maintained and the primary building orientation along Swannanoa River Road seems justified. The setback modification request should not negatively impact the character of the project. Landscaping and a sidewalk will be added along this side of the building to enhance the pedestrian experience.

At the Planning and Zoning Commission meeting, a resident of Kenilworth raised a concern that she was unaware of the project and was concerned about added noise filtering into Kenilworth and traffic along Caledonia Road. The Planning and Zoning Commission recommended additional contact with Kenilworth residents as the project moves forward. The development team has provided this outreach follow-up:

- Made contact with some neighborhood residents and a neighborhood meeting is planned for Wednesday 6/18/08;
- Included project information in a recent RiverLink supplement in the Asheville Citizen-Times;
- Provided an information board on-site with project contact information;
- Created a website to share information about the project.
- Staff has also shared project information with the Kenilworth Neighborhood Association president.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
   The project will meet health and safety requirements of local and state ordinances. The project will be elevated as required by the flood hazard ordinance to protect life and property.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
   The site is a former service yard for an industrial supplier and has been graded for this use. The river edge however will be un-developed and remain in a natural state and may

be improved at a future date as a part of greenway and buffer development. The project will be elevated as required by flood hazard ordinances to minimize damage from flooding and prevent water pollution. With these features in place, the current design will be compatible with the significant natural and topographic features of the site.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
The investment in this mixed-use project is expected to improve the values of surrounding properties. The proposal is consistent with the adopted goals and plans for the area to create places for mixed-use commercial and residential development. The site was accepted into the NC Brownfields Study area that will assess the site for any contaminants that may need remediation.

4. **That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
This site is located at the edge of the Swannanoa River and the Kenilworth Neighborhood sits on the bluffs and knoll above the river. The project should not create a negative impact or affect the character of Kenilworth because its focus is the Swannanoa River. The City Council adopted *Wilma Dykeman Riverway Master Plan* outlines a new vision for the river area with higher density mixed-use projects at appropriate locations as a way to bring new life, opportunity and energy to the river areas. In consideration of the Dykeman Plan goals, the proposal is in keeping with the harmony, scale, bulk, coverage and density and character of the river area.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
The comprehensive plan encourages redevelopment of infill sites to support multi-modal transportation, greenways and vertical development with greater residential densities. The Dykeman plan is a vision plan with many goals: redevelopment of infill sites with mixed-use buildings, economic development, transportation improvements, environmental protection, among many more. The Silverman proposal includes many of these goals through the specific features of the project. The proposal will provide residential units with some of the units offered at an affordable rate. In addition the project will seek Energy Star and Healthy Built for the residential portion of the project to contribute to sustainable development goals adopted by the City. The project will conform with the comprehensive plan and meets many goals and policies adopted by the City.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
The project is located along Swannanoa River Road which is a state highway. The location in the center area of the city means that the public infrastructure is in place to service the development. The project is located close by to commercial and employment centers and recreation areas.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
The traffic impact study determined that the anticipated traffic from the proposal at full build-out should not place an undue burden on the existing street infrastructure. Commercial traffic is not permitted to use Caledonia Road into Kenilworth already. The study did suggest certain mitigation improvements including left and right-turn lanes along NC 81 (Swannanoa River Road), two egress lanes on Caledonia Road, traffic signal timing revisions at the signalized intersection at Swannanoa River Road, Biltmore

Avenue and Meadow Road, and the proposed interconnectivity within the project that should minimize the adverse impact of delivery trucks solely using Caledonia Road to gain access to the site. The proposal is not expected to cause undue traffic congestion or create a traffic hazard as reviewed in the report.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

The River District Design Review Committee reviewed the proposal at the January 23, 2008, meeting and voted to approve the design. The Technical Review Committee reviewed the project at the April 21, 2008, meeting approving the project with conditions. The Planning and Zoning Commission reviewed the proposal at the May 7, 2008, meeting and recommended approval with a 5-0 vote. Several people spoke in support of the project during the public hearing and a resident of the Kenilworth neighborhood expressed concern about noise and additional traffic traveling through Kenilworth.

Pros:

- The project is mixed-use and meets many goals of the Dykeman Plan.
- The project could become a destination place within the river area.
- The project will seek Energy Star and Healthy Built for the residential units.
- Affordable units will be provided in the project meeting City of Asheville guidelines.
- Sufficient infrastructure is in place to support the project.
- The project should act as a catalyst for further redevelopment in the area.
- Mixed-use projects by design are often more sustainable and fight sprawl.
- The site has been accepted into the NC Brownfields Study Area to identify any environmental contaminants.

Cons:

- A historic business is coming to an end in the river district.
- Construction work can temporarily create congestion in the area.
- New vehicle trips will be added to Swannanoa River Road and possibly Caledonia Road.

The Planning and Zoning Commission reviewed the project at their May 7, 2008 meeting and voted to recommend approval with the TRC conditions and the setback modification request as reported by staff. Staff has reviewed the project and supports the plan as presented because it meets goals and plans adopted by the City and because the request is reasonable. The River District Design Review Committee reviewed the proposal and voted to approve the design at their January 23, 2008 meeting.

Mr. Dave Madera, developer, urged Council to support this development, which has a lot of support and the materials he is using is beyond LEED certification. He said they are still working on a lot of sustainability aspects and felt this development will be a model of things that should be done in the future.

Ms. Regina Trantham, representing Mica Village, spoke in support of the development in that he cleaned up a blighted industrial area. She was particularly pleased that part of the concept is a grocery store and it's accessibility to the community.

Mr. Fred English spoke against the project in that the housing market in Asheville has dropped and we have more houses now than people.

Mr. Meek, Kenilworth resident, spoke in support of the development. He felt this is a good use of this property. He suggested Council begin discussions now with the State regarding future traffic on Swannanoa River Road.

Ms. Pattiy Tomo, member of the River District Design Review Committee, spoke in support of this development, as it supports the Wilma Dykeman Plan and the vision of our riverways. It also provides workforce housing with 10% affordable housing. She felt this significant development will spur more development in the River District.

At 7:13 p.m., Mayor Bellamy closed the public hearing.

Councilwoman Cape urged people who are building new residential homes to contact Progress Energy regarding an energy efficient rebate.

Mayor Bellamy suggested the developer know that there is an active railroad with horns about 1/4 mile from the development.

In response to Councilman Mumpower, Mr. Madera said that he is asking for Council's support of the concept of a footbridge.

In response to Councilwoman Cape, using a plan, Mr. Madera showed the flow through pattern for loading and unloading the grocery store.

Mayor Bellamy spoke in support of the development and noted that the developer will be including 10% affordable housing units without a request for a density bonus or a land swap. She noted that the City has already received a $500,000 grant from the State for a traffic analysis on Swannanoa River Road.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Cape moved for the adoption of Ordinance No. 3634, to conditionally zone a project identified as Silverman's mixed-use development located at 48 Swannanoa River Road from River District and Institutional District to Urban Place District/Conditional Zoning, for the development of a mixed-use project consisting of 125 residential units, 26,000 square feet of retail/grocery space and 7,500 square feet of storage space for residents, along with a side-street building setback modification, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance; (3) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; and (4) This project will undergo final review by the TRC prior to issuance of any required permits. This motion was seconded by Councilman Mumpower and carried unanimously.

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At 7:22 p.m., Councilman Mumpower moved to go into closed session for the following reasons: (1) To establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of contracts for the acquisition of real property by purchase, option, exchange or lease. The location of the property is on Biltmore Avenue between Aston Street and Hilliard Avenue. The statutory authorization is contained in G.S. 143-318.11(a)(5); and (2) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations, provided that any action authorizing the payment of economic development incentives will occur in open session. The statutory authority is contained in G.S. 143-318.11(a)(4). This motion was seconded by Councilwoman Jones and carried unanimously.

At 7:55 p.m., Councilwoman Cape moved to come out of closed session. This motion was seconded by Vice-Mayor Davis and carried unanimously.

F. **PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE CONDITIONAL ZONING ORDINANCE FOR PROPERTY LOCATED AT 1741 HENDERSONVILLE ROAD REGARDING SIGNAGE FOR THE WEIRBRIDGE VILLAGE PROJECT**

ORDINANCE NO. 3635 - ORDINANCE AMENDING THE CONDITIONAL ZONING ORDINANCE FOR PROPERTY LOCATED AT 1741 HENDERSONVILLE ROAD REGARDING SIGNAGE FOR THE WEIRBRIDGE VILLAGE PROJECT

At the request of City staff, on May 13, 2008, this public hearing was continued to May 27, 2008. On May 27, 2008, the developer requested the public hearing be continued to this date.

Mayor Bellamy opened the public hearing at 7:56 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance to amend the conditional zoning ordinance for property located on 1741 Hendersonville Road regarding signage for the Weirbridge Village Project. This public hearing was advertised on May 2 and 9, 2008.

The subject property, 20.66 acres, is located within the city limits, at the corner of Hendersonville Road and Racquet Club Road. The property previously contained a few homes and accessory buildings, which have now been demolished. Surrounding properties are both residential and commercial. To the north is the Racquet Club (a recreational facility) and the Racquet Club Village condominiums. Applebee's restaurant is on the northwestern corner at the intersection of Racquet Club and Hendersonville Roads. Across Hendersonville Road are apartments and commercial properties. To the south, a low density multi-family development (Crowfields Condominiums) abuts the development and to the east another condominium development, South Oaks, is located. The zoning in the area reflects the development; to the north and east, RM16 and HB, and to the south and west, RM6.

The applicant received conditional zoning approval in November of 2006 for the property to be zoned Highway Business Conditional Zoning. The site plan that was approved with the rezoning presented a mixed use development with commercial outparcels to the east (along Hendersonville Road) and 336 residential dwellings located on the middle and western portions of the property.

A number of conditions were placed on the property at the time of the rezoning. One of these conditions concerned the signage for the commercial outparcel portion of the property. The conditions placed on this signage were as follows:

- One development identification sign would be allowed. (The condition did not state size specifications). Commercial subdivision signs are allowed in the UDO to be sixty (60) square feet per face and a maximum eight (8) feet in height with a ten (10) foot minimum setback.
- Each tenant in the commercial portion was allowed one (1) monument identification sign per street frontage. Each of these signs was to be no greater than eight (8) feet in height and fifty (50) square feet per face.
- Each tenant in the commercial portion was to be allowed one (1) attached sign no greater than fifty (50) square feet per face.

Signage for the residential development was not addressed.

The developer of Weirbridge Village has finalized design of the signage for the project and now desires to come to Asheville City Council with a comprehensive sign package as an amendment to the conditional zoning previously approved. Council is authorized, under Section 7-13-10 of the City of Asheville Code of Ordinances, to approve signage plans differing from the standard regulations for "commercial, industrial, or mixed use developments containing five or more acres in size.

The developer desires some flexibility with respect to one of the signs which may be multi-tenant and may be single-tenant. The addition of the possibility of a small multi-tenant development now showing as part of the commercial piece and which was not previously anticipated makes it difficult to compare the submittal with what was previously approved. With that in mind, she showed a table which indicates what was approved by Council, what would be allowed per the ordinance, and what the developer is now requesting for signage. As part of this signage package, the existing off-premise sign for Racquet Club Road will be removed.

Additionally, as part of this conditional zoning amendment, the developer seeks approval of a tower feature at the southern entrance to the project. This tower would be accompanying a sign feature at the same entrance; however, staff does not consider this tower a sign. We would treat this as an accessory structure on the site, which was not approved under the original CZ approval. Council would need to approve this as part of the CZ amendment.

Amendments to Conditional Zoning approvals come directly to the Asheville City Council so this matter has not been previously heard by the Planning and Zoning Commission or the Technical Review Committee.

Pros:

- The proposal sets forth a comprehensive, coordinated sign package for a major development.
- The majority of the signage is in conformance with previously approved restrictions on the development and in most instances is significantly less than what is allowed in the Highway Business District.

Cons:

- Staff feels that the tower feature is out of character for the surrounding area.
- Some may feel that the signage is excessive for the area.

Based on the analysis provided in the report, staff finds part of this request to be reasonable and part to be unreasonable.

Mr. Clay Mooney, representing the developer, spoke about the positive aspects of the development, such as LEED certification, stormwater control and traffic mitigation measures. He then explained their desire to provide a signage package of signs and architectural features that create a unified and complimentary approach to signage that is unlike any other development in south Asheville. Except for a few instances, the signage proposed is smaller and in some cases significantly smaller than what would be allowed for a Highway Business District zoning project. He then showed graphics of the signs, along with site perspectives from the north and south on Hendersonville Road.

Mr. Rusty Pulliam spoke in support of the signage amendment, noting that the tower sign is not taller than any other sign on Hendersonville Road.

Mr. Robert Fitch, resident of Crowfields, spoke in support of the signage package in that the developer has taken into consideration the traditional appearance of the Crowfields entrance.

At 8:18 p.m., Mayor Bellamy closed the public hearing.

When Mayor Bellamy asked if the project would have any shrubs in the street tree strip on Hendersonville Road to minimize the impact of the larger sign, Mr. Mooney said that they are just beginning their landscaping plan. He said it was pretty common to put shrubs in the front and that is probably something they will have.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3653, to (1) approve the sign/feature package requested subject to the following: (a) Sign #1 as Depicted but Reduced in Height to 8' 6"; (b) Sign #2 Allowed as Depicted If Northernmost Property is Multi-Tenant Development;(c) Multi-Tenant Attached Signage – Per the UDO; (d) Single Tenant Commercial Outparcel Freestanding Signs as Depicted as #3 in the Package Submittal with Compliant Setbacks for 2 or 3 Single Tenant Commercial Outparcels; (e) Single-Tenant Attached Signage – One Sign Per Street Frontage (Maximum of Two Signs), 50 Square Feet Per Face; Internally or Externally Illuminated; (f) Signs Numbered 7, 7a and 4 which are internal to the project (not along Racquet Club) are permitted as presented; (g) Residential ID Sign as Depicted as #5 in Package (without the tower) with Compliant Setback; (h) Up to 4 Directional Signs as Depicted Along Racquet Club Road but with only 2 Faces Per Sign and limited to 4 Feet in Height– These Must be Directional in Nature (To Buildings);and (i) That the tower feature not be approved; (2) amend the conditional zoning ordinance for the Weirbridge Village Project in accordance with this package (and any changes); and (3) approve the accessory tower structure depicted in the package. This motion was seconded by Councilman Newman and carried unanimously.

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V. UNFINISHED BUSINESS:

A. ORDINANCE NO. 3636 - ADOPTION OF THE 2008-09 ANNUAL OPERATING BUDGET

Chief Financial Officer Ben Durant said that this report presents the Fiscal Year 2008/2009 Annual Operating Budget for City Council's consideration before adoption.

The Fiscal Year 2008/2009 Annual Operating Budget was formally presented to City Council on May 13, 2008. In accordance with the North Carolina Local Government Budget and Fiscal Control Act, a summary of the Budget along with a notice of the public hearing was published on May 30 and June 6, 2008. City Council conducted a public hearing on the budget on June 10, 2008.

At the June 17, 2008, budget worksession, Council requested that staff provide additional information on the City's investments in public safety over the last three fiscal years, and also provide data on transit ridership. Staff has provided Council with that information. Staff has also provided information detailing the impact of asphalt and concrete price inflation on the City's street resurfacing program over the last eight years.

Regarding the budget adoption, the net proposed operating budget presented to City Council on May 13th was set at **$135,406,757**, including a General Fund appropriation of **$86,865,552**. At the June 17, 2008, budget worksession, Council requested that staff make the following additions to the proposed General Fund budget:

- $10,000 to fund the Each One Reach One program, a summer basketball program for two hundred-fifty youth up to age 21 years, with a year-round mentoring and tutoring component. The objectives of the Each One Reach One program are to improve academic performance and reduce juvenile crime;

- $50,000 for regional economic development initiatives;

- $13,092 to fully fund the City Council training allocation proposed by staff at the June 17 worksession.

In summary, the changes endorsed by Council on June 17 left the General Fund budget out of balance by **$73,092.** To re-balance the General Fund budget, staff is proposing to appropriate revenue from the Huntington Chase annexation area. The legal challenge to this 2002 annexation was recently resolved in the City's favor, and the Huntington Chase area will become part of the City in July 2008. Total revenue from this annexation is estimated at **$80,000.** Staff will budget this $80,000 in additional revenue to cover the $73,092 in costs added to the budget and place the remaining $6,908 into a contingency account. The net result of these changes increases the operating budget to **$135,486,757**, and the General Fund appropriation to **$88,945,552.**

As staff discussed with Council at the June 17 worksession, the proposed changes to the wholesale water rates and fire inspection fees are included for consideration along with the Budget Ordinance.

In summary, the budget themes are (1) no tax rate increase; (2) ongoing support of strategic initiatives that make Asheville affordable, green, safe and sustainable; (3) adequate compensation package; and (4) prudent belt tightening given a slowing economy.

Staff requests that Council review the FY 2008/2009 Annual Operating Budget, including the changes noted above, and make necessary recommendations or adjustments followed by adoption of the Budget Ordinance.

Councilman Mumpower voiced concerns regarding last minute additions to the budget, incremental progress to drug interdiction, reduction in our Fund Balance and the transit budget.

Councilwoman Cape acknowledged that the budget is not perfect, but staff has done a good job. She noted that throughout the budget process Council did not even talk about a tax increase. She noted that there was a 9% public safety increase over the past five years and that is a good commitment to public safety.

Councilman Newman felt this is a responsible budget that addresses some important priorities without a property tax increase on citizens who already pay more than their fair share for infrastructure in our region. Regarding structural challenges the City has from a fiscal standpoint, Council needs tools to address our lacking infrastructure needs. The only tool we have is to raise property taxes. We need new revenue sources or we need an ability for our tax base to grow as the City grows. There are legislative factors that affect our ability to grow like all other cities in the state. Other cities can use voluntary annexation so that as new developments come into the city, the city will grow and the tax base will grow. Now our state legislators are contemplating taking away the only vehicle the City has to grow, which is a City Council initiated annexation. We need to work with our legislators so Asheville can grow as a city when new developments are built, or we will have to neglect our basic infrastructure and basic services or be forced to raise property taxes. We also need to look for ways to talk with the County government about possible efficiencies between our level of government and their level of government.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Jones moved for the adoption of Ordinance No. 3636. This motion was seconded by Councilwoman Cape and carried on a 5-1 vote, with Councilman Mumpower voting "no."

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B. SMALL BUSINESS HEALTH CARE INITIATIVES

City Attorney Oast said that this is a review of legislation authorizing health insurance pool pilot program

Representative Bruce Goforth, whose district includes Buncombe County, has introduced House Bill 1229. If adopted, the bill will authorize the establishment in Buncombe County of a pilot program for a health care insurance pool. The pool would involve voluntary participation by public and private employers, from Buncombe and the surrounding counties, and would involve each participating employer contributing to a fund. This contribution would be matched with funding from State, federal and private sources, to subsidize private insurance for segments of the WNC population that are underserved by medical care, due to cost and lack of adequate insurance.

The law would also provide a tax credit to small businesses that maintain and contribute to a health insurance program for their employees.

As the governing board for the largest municipality in WNC, and one of the largest employers in the county where the pilot program will be centered, the City Council may wish to take a position on this legislation, or to request more information.

The City's Health Insurance Consultant has reviewed the legislation. The pros and cons identified in his analysis are summarized below.

Pros:
- Potential to reduce the number of uninsured and underinsured individuals in Buncombe County and WNC
- Potential to reduce health care costs for some segments of the population
- Potential for improved wellness programs and health education

Cons:
- Size of pool may have little effect on costs
- Voluntary health insurance pools typically have higher risk participants
- Cost savings from additional government funding might not be sufficient to affect administrative cost
- Possibly redundancy with the already-existing N.C. Health Insurance Risk Pool
- Limited uses

Information on the fiscal impact is not available.

Council should review and consider whether to support the legislation as a policy matter. At Council's direction, staff will draft the appropriate resolution.

Mayor Bellamy said that the Department of Insurance supports this pilot project, however, a health insurance provider does not support the initiative, and therefore, the legislation was withdrawn.

After a brief discussion, Council supported being kept informed of this proposed legislation and looked forward to staff bringing back a report at the appropriate time.

C. REVIEW AND DISCUSSION OF CITY & COUNTY PROPOSALS FOR DEVELOPMENT ON THE SOUTH SIDE OF CITY-COUNTY PLAZA

Public Information Officer Laurie Saxton reported on the actions taken by the Buncombe County Commissioners at their meeting on this same date. She said that the County provided to Council a proposed resolution (which was the subject of their meeting) encouraging a land swap between the City of Asheville and Black Dog Realty and Swag Holdings and intent to establish public park. She said the Commissioners heard reports on the history of the parcel on the Parkside project. The Commissioners received an amendment to the resolution extending the time period from 30 days to 60 days for the City to conduct its analysis of the possible land swap. As stated in the resolution, the Commissioners are still exploring the possibility of reacquiring the Parkside property. The County Manager said that an offer has been made to Mr. Coleman and he apparently has not responded yet, but is considering that offer. The County Manager also said that the County is in the process of having the park property appraised and that that appraisal will be complete in the next 3-4 weeks. With all that information the Commissioners unanimously approved the amended resolution.

Councilwoman Cape noted that the County needs 3-4 weeks for an appraisal but they've only given the City 60 days to determine whether or not the City would do a land swap, which is a much more complicated piece of property with infrastructure. In addition, the proposed resolution requests that the City commit to a land swap within that period of time. She felt that was impossible. She felt there needs to be a willingness with the County and Mr. Coleman to enter into discussions. The City has always had the willingness to enter into discussions on that piece of property, but not been given the opportunity to do so. She affirmed the City's resolution that the County reacquire that park land.

When Mayor Bellamy asked what happens after their appraisal is complete, Ms. Saxton believed that was in conjunction with the following portion of their resolution "2. That to help defray the costs associated with relocating any streets, utilities or parking as required by such a land swap, this Board will pay to the City of Asheville an amount equal to the appraised value per square foot of the Black Dog Realty and Swag Holdings properties as they currently exist for the total square footage of land to be added to the southern edge of the City-County Plaza area resulting from any land swap between the City of Asheville and Black Dog Realty and Swag Holdings."

Councilman Mumpower questioned the value of Council deliberating this in a vacuum. He wondered if postponing it would provide the opportunity for additional conversation between Council and staff and their Commission and staff.

Councilman Newman questioned why the County was just now doing an appraisal of the 3,000 sq. ft. of park property they sold to Mr. Coleman. City Attorney Oast responded that the sale was completed in 2006 and he didn't know what information was used to assess the value back then, but it could be in the meantime the price of the property has gone up.

Councilman Newman supported scheduling this item for discussion at our next Council meeting. He believed that development of the building in its current configuration would be a real travesty for the future of Asheville. Personally he would be open to exploring all options for preventing the construction of that building in its current configuration, ranging from any cooperative efforts we can continue to make for the transfer that property back voluntarily to the County. If that does not happen, he would be open to the City taking legal action to challenge the legality of this sale of this public property to a private developer. Citizens in our community have already initiated such a lawsuit and he believed it would say a lot about City government to side with the citizens in Asheville. He isn't saying he would not consider a property exchange, but that would not be his first choice. To enter into a public/private partnership in the present environment would be practically unworkable. Public/private partnerships are always difficult even in the best conditions.

In response to Councilwoman Cape, City Manager Jackson said that he has consistently communicated to Mr. Coleman is that if he has a proposal to the City that the presentation should be made to Council at a Council meeting.

Mayor Bellamy said that there are members of the community that do not want the development to move forward and don't want Council to swap land. She noted that the County has passed a resolution for the City to do a land swap, but they don't own the property. And, an application has been received by City staff that meets the letter of the law and will be reviewed by the City's Technical Review Committee (TRC). There has been no willingness on Mr. Coleman's part to come forward and want to work with the City. She suggested writing a letter to Black Dog Realty and Swag Holdings stating that there is a willingness to talk while still acknowledging the process.

Councilman Mumpower would not be supportive of the City participating in a lawsuit. He feels strongly that we should not side-step the existing development process, which includes the involvement of stakeholders. Personally he was not in favor of an arbitrary land swap that sidesteps the normal development processes. He suggested City staff be instructed to contact Mr. Coleman, within the limits discussed today, and see if there are some points of compromise.

Councilman Mumpower moved to postpone this item until the next formal Council meeting on July 22, 2008, and instruct staff to contact Black Dog Realty and Swag Holdings to see if they would be open to discussions. This motion was seconded by Vice-Mayor Davis.

Vice-Mayor Davis felt engagement with Mr. Coleman is very important. If the matter is postponed to July 22, it will give the staff an opportunity to advise Council what the Technical Review Committee's implications are if the building is built as allowed by our ordinances and also give Council time to consider other possibilities. He would not support joining in a lawsuit.

Mayor Bellamy noted that Council would need to have direct contact with Black Dog Realty and Swag Holdings to see if they would be open to discussions, and not through the County Commissioners.

In response to Councilwoman Cape, Interim Planning & Development Director Shannon Tuch said that the TRC will be meeting on July 7, 2008, to review this project. She said at that meeting, it will be the final public review. Ninety percent of TRC projects are approved with certain conditions. Once the project is approved the designers go back and address the site plan revisions and any other conditions that need to be addressed and re-submit that information to the pertinent staff. We have already identified a number of fairly significant conditions that would have to be addressed before permits could be issued. But essentially it's conditionally approved. Often times the staging can be approved or conceptually approved. Then there are subsequent conversations between the relevant technical staff and the developer and contractor because sometimes that information is not available at the time of the TRC meeting. The City will require a no-build easement for the east side of the building (the side that faces City Hall) and that easement needs to come from Buncombe County. The no-build easement says that they will not build anything within 20 feet in order to allow their windows. Without that easement they would have to build a solid firewall with no windows on the east side of the building. If the building were to have a solid brick firewall on the east side, that would be a significant change and the project would have to start over again and go back to the Downtown Commission.

In response to Councilwoman Cape, City Attorney Oast said that our research indicates that the property to the east of where the proposed project will be built is owned by Buncombe County.

Ms. Tuch said that staff has also identified the need for easements for the permanent improvement of the road that is proposed as part of this application. That easement would have to come from Buncombe County, the City of Asheville and the Pack Square Conservancy. City

Attorney Oast said that the easement decision would essentially be a decision to convey interest in real property and the easement would have to come before Council.

Ms. Tuch said that the TRC would identify these conditions as well as other common site plan conditions that would have to be addressed prior to the release of any approvals. The developer would follow-up with the appropriate staff later and provide the easements and any recorded documents.

When Councilwoman Cape asked about the disruption of City business with regard to staging, Ms. Tuch said that has been discussed for some time. There are a number of ideas and the City has had experience with construction downtown on how to stage appropriately.

Councilwoman Jones was open for discussion and supported asking our staff to talk with Mr. Coleman. She wanted to highlight to the County Commissioners to continue to try to reacquire that land because she feels that is the best way to resolve this.

Councilman Mumpower restated his motion to (1) postpone this item until the July 22, 2008, meeting; (2) instruct City staff to make efforts to meet with Black Dog Realty and Swag Holdings to see if they would be open in exploring possibilities; (3) instruct staff to provide Council a timely update of the TRC process along with the next steps involved in the development process; (4) receive clarification on what the established procedure is for developing property in that area of the City; and (5) encourage Buncombe County to continue their efforts to resolve the issue in a constructive fashion per the previously-adopted Council's resolution. Vice-Mayor Davis agreed with this restated motion.

There was a brief discussion of Council postponing this until their formal meeting on July 22 or their worksession on July 15, given that the TRC will be reviewing the project on July 7.

Councilman Mumpower amended his motion that the item be posted until the July 15, 2008, City Council worksession. Vice-Mayor Davis accepted that amendment.

When Mayor Bellamy asked if there was any way Council could ask for a delay in consideration of this project by the TRC, City Attorney Oast said that to the extent that he has attended TRC meetings, the request for a continuance is at the request of the applicant or staff if there is something significant from the application missing. He would not advise staff to request a continuance unless there is a good reason to do so.

Councilman Newman felt there were significant legal questions about the sale of this public property to a private developer. He requested at the next meeting a closed session to review the legal issues and that we also ask the legal representative for the citizens of Asheville, who have initiated the lawsuit challenging the sale of this public property, in order to hear their legal perspective on this as well.

In response to Councilwoman Jones, City Attorney Oast felt that if a no-build easement is required, it was his opinion that it would require a vote of the County Commissioners.

The restated and amended motion made by Councilman Mumpower and seconded by Vice-Mayor Davis carried on a 5-1 vote, with Councilwoman Jones voting "no."

VI. NEW BUSINESS:

A. RESOLUTION NO. 08-143 - RESOLUTION TO INCREASE THE RENT AND PRICE LIMITS USED TO DEFINE "AFFORDABLE HOUSING" FOR THE PURPOSE OF THE HOUSING TRUST FUND AND FEE REBATE PROGRAMS

Community Development Director Charlotte Caplan said that this is the consideration of a resolution to increase the rent and price limits used to define "affordable housing" for the purpose of the Housing Trust Fund and Fee Rebate Programs.

The existing maximum sales prices and rents for the Housing Trust Fund (HTF) and Fee Rebate programs were approved by Council in October, 2006. Since then:

- Area median income has increased about 4%
- Construction costs have increased by at least 10%
- Sales prices of existing homes have increased by about 20%
- Rents for existing units have increased by approximately 7% and rents for newer (1-5 year old) units by 11%
- No new HTF applications received for homeownership development in last 12 months
- Use of the fee rebate program has declined sharply

Developers have expressed concern to staff that they can no longer build homes to meet the current limits. Even Habitat for Humanity now prices its homes over the current limits and can no longer take advantage of the fee rebate program.

The Housing & Community Development Committee discussed this issue at their May 19 meeting. They were aware that the Mayor's Affordable Housing Task Force would shortly recommend eliminating the sales price cap altogether, while keeping income caps and rent caps. They decided that, even if that recommendation is eventually accepted, it is desirable to update existing price and rent limits now in order to maintain the usefulness of the programs in the short term.

Proposed Rent Limits: Ms. Caplan reviewed information which sets outs recommended maximum rents for developments seeking Housing Trust Fund loans in 2008-09. There are two sets of rents, one based on affordability for a household at 75% of area median income and a lower set of rents which are affordable to a family at 60% of area median income. The lower rents apply only to developers seeking the most favorable loan terms.

Rent limits are not needed for the Fee Rebate program. To avoid administrative complexity, rebates for rental units are contingent on the units being assisted by another local, state, or federal program that requires continued affordability, such as the Housing Trust Fund or the HOME program.

Proposed Price Limits: Ms. Caplan then reviewed information which sets out recommended increases averaging about 6% in the sales price limits for both programs. These include a restored differential for 4-bedroom homes because Habitat for Humanity is building significant numbers of these homes and the prices are inevitably higher.

Regarding the City Council Strategic Operating Plan, Council has recently adopted the following four goals: *sustainable, affordable, green and safe*. This report's recommendations address the sustainability of the City's affordable housing programs by ensuring that key parameters are updated in line with economic trends.

The changes are consistent with the City's Strategic Housing and Community Development Plan for 2005-10.

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Pro:

- Increased price and rent limits will restore the programs' availability to developers and encourage development of additional affordable units.

Con:

- Sales prices and rents at or near the new limits will be less affordable in relation to median income.

There will be no impact on the Housing Trust Fund, which has a fixed appropriation. Fee Rebates are an expense to the general fund which depends on developers' usage of the program. Total costs peaked at $57,000 in Fiscal Year 2005 but have since declined to $31,000 in Fiscal Year 2007 and only $4,000 in the first half of FY 08. The recommended changes will tend to reverse this decline.

City staff recommends City Council adopt a resolution to increase the rent and price limits used to define "affordable housing" for the purpose of the Housing Trust Fund and Fee Rebate Programs.

Councilman Newman said that the City does a lot of things to support affordable housing in the City, but the really most basic way that we can provide an incentive for affordable housing that would apply to everyone is to provide some form of basic reduction in the fees you have to pay to the City when you build affordable housing.

Councilman Mumpower personally felt the City should not be involved in the business of subsidizing some people's housing with taxes that are paid largely by other people's houses who afford or otherwise produce their housing opportunities. He felt that $125,000 for a one-bedroom apartment is not affordable. He felt that is an artificial figure used as a trigger for subsidies and did not believe it was realistic to meet the needs of the people that we want to help.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Newman moved for the adoption of Resolution No. 08-143. This motion was seconded by Councilwoman Jones and carried on a 5-1 vote, with Councilman Mumpower voting "no."

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B. RESOLUTION INCREASING THE CITY MANAGER'S AUTHORITY TO SIGN CERTAIN CONTRACTS ON BEHALF OF THE CITY OF ASHEVILLE

Assistant City Attorney Curt Euler said that this is the consideration of a resolution increasing the City Manager's authority to sign certain contracts on behalf of the City of Asheville.

The City of Asheville deals with thousands of contracts on a yearly basis. In an effort to streamline the process for better customer service for venders and between City Departments, City staff, through a Legacy of Excellence (LX) Team, has proposed numerous revisions to the City's internal contracting process. One of the main recommendations was to increase the City Manager's authority in terms of dollar thresholds to sign contracts on behalf of the City. Currently, the City Manager is authorized to sign informal construction contracts under $100,000.00, service contracts under $50,000.00 and professional service contracts under $50,000.00 without formal City Council approval. In order to reduce the time needed to execute a contract, the LX Team is recommending that the City Manager have authority to sign all contracts under $100,000.00 without formal City Council approval.

This resolution meets the one of the City Council's Strategic Goals by strengthening efforts to create measurable goals, accountabilities and outcomes for the City's contracting process.

Pros:

- Reduce the number of contracts brought before City Council.
- Reduce the amount of time it takes for the execution of a contract $50,000.00 and over.

Con:

- Less Council oversight on service and professional service contracts between $50,000.00 and $100,000.00.

City staff recommends City Council adopt a resolution increasing the City Manager's authority to sign service and professional service contracts and purchase equipment and apparatus without City Council approval from under $50,000.00 to under $100,000.00.

When Councilman Mumpower asked about how often staff feels obtaining Council approval is a delay, Mr. Euler said that occasionally an item takes 2-3 weeks to be considered by Council, sometimes due to the fact that staff doesn't get the information to the Clerk as quickly as they should have.

Councilman Mumpower didn't think this is a big problem. He felt that Council should be given the opportunity to discuss a $100,000 expenditure. It's not that he mistrusts the City Manager, but it has not been demonstrated that there is a problem obtaining Council approval. He could not support the action.

Mayor Bellamy noted that as soon as an item is requested to be on the consent agenda through either herself or the Clerk, it is added immediately.

Councilwoman Jones moved to adopt a resolution increasing the City Manager's authority to sign certain contracts on behalf of the City of Asheville. This motion was seconded by Councilman Newman.

Councilman Newman said that Council has a full awareness of all contracts as they receive a report of contracts of any size that are signed by the City Manager.

In response to Councilwoman Cape, City Manager Jackson said that he expedites contracts when they are given to him. The challenge is that he needs to support the term who was asked to find ways to streamline the process, make our business more efficient, and be a better partner to our business community. This was their recommendation.

After a short discussion, Councilwoman Jones pointed out that the expenditures are already budgeted and some discussed during the budget process. This would eliminate the need to discuss the expenditures twice.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

The motion made by Councilwoman Jones and seconded by Councilman Newman failed on a 3-3 vote, with Councilwoman Cape, Councilwoman Jones and Councilman Newman voting "yes" and Mayor Bellamy, Vice-Mayor Davis and Councilman Mumpower voting "no."

C. RESOLUTION NO. 08-144 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH THE BUNCOMBE COUNTY GANG PREVENTION TASK FORCE AND OTHER LOCAL SERVICE AGENCIES FOR THE DEVELOPMENT OF A COMMUNITY GANG PREVENTION COALITION

Mayor Bellamy said that this is the consideration of a resolution authorizing the Mayor to execute an agreement with the Buncombe County Gang Prevention Task Force and other local service agencies for the development of a Community Gang Prevention Coalition.

Mayor Bellamy said that earlier this year the Gang Task Force renamed itself to RICH Task Force, which means Reaching, Inspiring, Character and Hope. It's an opportunity for service providers and community members to come together to talk about how they address teens and youth. One of the first things they have done is identify several of the services that are serving our youth and most of them are under the age of 13. Because we use City staff to help notify the attendees of the meetings and take minutes, it's imperative that we get that support from Council to move forward as a Coalition supported by City Council.

In response to Councilman Mumpower, Mayor Bellamy said they are working with the Juvenile Control Prevention Counseling in looking at the legislation that has been approved by the Senate that requires every county to have a Gang Task Force to look at gang issues. There is conversation being had on how we work together to meet the State's mandates as well as our community needs.

When Mayor Bellamy opened the floor up for public comment, none was received.

In response to Councilwoman Cape about how a Task Force is established, Mayor Bellamy said the task forces she has worked with have been through invitations by the Mayor. She said the Task Force is county-wide and includes Buncombe County school system, Asheville City school system, several service providers, pastors in the community, community members who have a commitment to want to see something addressed, etc. She also said that the Asheville Police Department has been sending representatives to the meetings as well. The Task Force has said that they would do what they could to support the Police Department as well.

When Councilwoman Cape asked if there was a budget that goes along with the Task Force, Mayor Bellamy said a budget is not being asked for at this time. The City's role in the Coalition would be to maintain the invitation list, ensure proper public notification of meetings and provide meeting space.

Mayor Bellamy noted that at Vice-Mayor Davis' recommendation, a member of the Affordable Housing Task Force was added to the Community Gang Prevention Coalition.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Mumpower moved for the adoption of Resolution No. 08-144. This motion was seconded by Councilman Newman and carried unanimously.

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VII. OTHER BUSINESS:

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

A. Transit System Discussion

Mr. Mike Fryar voiced concerns about the transit system. He presented Council with the following information while explaining his concerns: (1) Ms. Pam Stewart's letter of resignation dated June 16, 2008; (2) letter dated March 15, 2008, from Mr. Lonnie Blair to then Director of the Transit Services Department Bruce Black; (3) letter dated March 27, 2007, from Mr. Lonnie Blair; (4) copy of Leon Alder's resume (General Manager for First Transit); (5) copy of Transit Services budget; (6) chart of night ridership and cost for UNC-Asheville; and (7) chart of salaried employees at the transit center, showing number of years of service. In summary, the existing employees have no trust or respect for the City as City staff did not even consult with the current

General Manager (Lonnie Blair), who has 36 years of service to the Asheville Transit, when discussing a change of management company.

In response to Councilman Mumpower, City Attorney Oast said that some issues are between the management company coming in and current transit employees and other issues are personnel in nature and involve City employees.

Mayor Bellamy said there are some working conditions we can talk about, such as hours of operation, partnerships and their effectiveness, and the Transit Department as a whole. She cited an instance where Council asked that the number of employees in a City office be changed, so there is precedent for Council to talk about that.

Councilman Mumpower requested a worksession agenda on this matter. He asked (1) for additional conversation about the City's arrangement with UNC-Asheville and the budgetary realities of that relationship; (2) for clarification, in terms of dollars and percentage of time, on the number of staff in the transit system, whether it be part-time association or full-time; (3) for information on the current staffing pressures and what those pressures consist of; and (2) if there are any contractual concerns.

Mayor Bellamy said that an issue is scheduled on August 19 regarding salary trends and she felt we could expand that conversation to include this discussion.

Councilman Mumpower requested a brief staff summation of his requests at staff's earliest convenience, but prior to the August 19 worksession.

City Manager Jackson said that there are policy issues and then there are complaints of impropriety, dishonesty, etc. He takes the later as very important and gives it a high sense of urgency. In the case of complaints of dishonesty, he met directly with Ms. Stewart (after she had submitted her letter of resignation) and invited her to provide information that would allow him to investigate those complaints. He would do that with any complaint about any department or any operation. He is 24/7 when it comes to complaints of customer service or any issues of integrity or inappropriate behavior by City employees. That does not wait for items to be considered by this Council. That is his commitment to integrity and responsiveness. Those are matters of urgency. Matters of the UNC-Asheville's relationship, budget staffing, ridership, etc., will be gathered by the Director of Transportation and Engineering and her staff at the earliest possible time. That information will be in a staff report given to the City Clerk so that the Mayor can schedule it at the earliest convenience.

Councilwoman Cape felt it would be beneficial to let the Transit Master Plan bring forward solid information.

Vice-Mayor Davis hoped that we are listening to what the employees have to say and give their comments consideration.

Mayor Bellamy thanked the bus drivers for their efforts during the fare free program. She acknowledged that it put a lot of pressure on staff and the entire transit system. Noting that the transit employees are not directly City employees, Council does want them to be heard. The new management company should send someone to listen to the employees concerns. She personally would like Mr. Blair to continue in that position and it appears like the transit system staff would like some advocacy done on their behalf with regard to that. She supported a budget amendment to acquire fare boxes for our buses. She also felt that with transit moving to a multi-modal system, it should be a stand alone department.

In response to Mayor Bellamy, City Attorney Oast said that with a transit management company, Council's ability to negotiate over working conditions is limited. There are certain negotiations the City can work on with the management company, but not direct negotiations with

their employees. Per the Mayor's request, he will research, for the August 19 worksession, what would have to happen to have the management employees become City employees.

B. Blue Ridge Rollergirls

Ms. Jennifer Possick spoke to Council about the success of the Blue Ridge Rollergirls and urged Council's support.

C. Parkside Project

Mr. Dwight Buckner supported a land swap with Mr. Coleman which would save our 750 year old magnolia tree; work better for a performing arts center; honor the City's commitment to the Pack Square Conservancy; and the public would be getting their original park back.

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 10:37 p.m.

Magdalen Burleson
CITY CLERK

Jerry McBellamy
MAYOR

CAuth

DEPARTMENT OF CULTURAL RESOURCES

DIVISION OF ARCHIVES AND HISTORY

ARCHIVES AND RECORDS SECTION

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PAGE: Index

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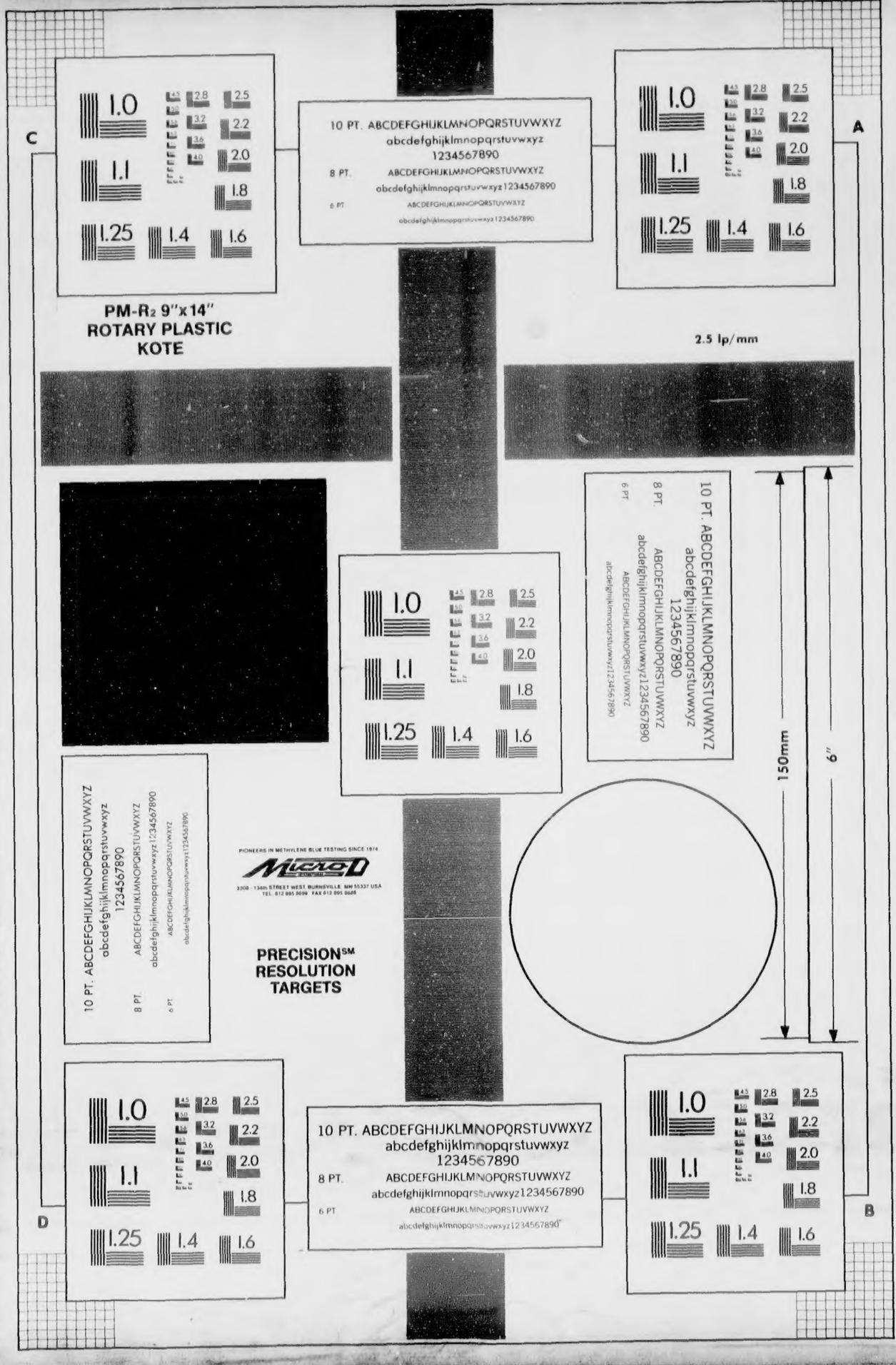
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